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DEMETRIC DI-AZ and OWEN DIAZ

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEMETRIC DI-AZ, OWEN DIAZ, and
LAMAR PATTERSON,

Plaintiffs,

v.

TESLA, INC. dba TESLA MOTORS, INC.;
CITISTAFF SOLUTIONS, INC.; WEST
VALLEY STAFFING GROUP;
CHARTWELL STAFFING SERVICES, INC.;
and DOES 1-50, inclusive,

Defendants.

Case No. 3:17-cv-06748-WHO

**PLAINTIFFS' DESIGNATION OF
DEPOSITION TESTIMONY WITH
DEFENDANT'S OBJECTIONS AND/OR
COUNTERDESIGNATIONS**

Pretrial Conference Date: May 11, 2020
Time: 10:00 a.m.

Trial Date: June 8, 2020
Complaint filed: October 16, 2017

Plaintiff Owen Diaz hereby designates the following deposition transcript excerpts for presentation as part of his case in chief and submits these with Defendant's objections and/or counter designations:

Delgado, Jackelin 10/10/19, Volume 1

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1	9:15-9:17	<p>9:15 Q. BY MR. ORGAN: Okay. Ms. Delgado, could you</p> <p>16 please state your full name for the</p> <p>record?</p> <p>17 A. Yes. Jackelin Delgado.</p>	
2	9:22-10:06	<p>9:22 And if you could, give me just a little bit of</p> <p>23 your educational background. Did you go to college?</p> <p>24 A. Yes, I did. I have a Bachelor's of Science in</p> <p>25 human resources management.</p> <p>10 :1 Q. And where is that from?</p> <p>0 2 A. It's from the University of Phoenix in the Bay</p> <p>0 3 area, California.</p> <p>0 4 Q. And then what year did you get your B.S. in HR</p> <p>0 5 management from University of Phoenix?</p> <p>0 6 A. It was 2014.</p>	<p>Counterdesignation: 10:7-15. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a)(6).</p> <p>7 Q. Okay. And do you have any other college-level</p> <p>8 degrees or above, other than your B.S. in HR management?</p> <p>9 A. No. I'm currently in the first year of my</p> <p>10 Master's, but I don't have it.</p> <p>11 Q. Okay. That was going to be my next question.</p> <p>12 And what are you pursuing a Master's Degree in?</p> <p>13 A. In business management.</p> <p>14 Q. Okay. So an M.B.A.?</p> <p>15 A. Yes.</p>
3	10:22-11:06	<p>10:22 Q. What year did you graduate high school?</p> <p>23 A. In 2003.</p> <p>24 Q. Okay. What high school did you go to?</p> <p>25 A. Gunderson High School in San Jose, California.</p> <p>11:01 Q. And what did you do after you graduated from</p> <p>02 high school?</p> <p>03 A. I started working in human resources for Smart</p> <p>04 & Final.</p> <p>05 Q. And what was your job title for Smart & Final?</p> <p>06 A. I was a field trainer for the Bay area.</p>	<p>Counterdesignation: 11:07-11:13. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a)(6).</p> <p>7 Q. And what did a field trainer do?</p> <p>8 A. We did the onboarding process. We trained new</p> <p>9 hires. We did audits throughout the different stores and</p>

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			<p>10 just maintained</p> <p>compliance with employment practices as</p> <p>11 well as business practices.</p> <p>12 Q. How long did you work for Smart & Final?</p> <p>13 A. Like four years, I believe, or so.</p>
4	11:17-12:02	<p>11:17 Q. And what was your next job after working in HR</p> <p>18 at Smart & Final?</p> <p>19 A. I worked for Target Corporation.</p> <p>20 Q. And what did you do for Target Corporation?</p> <p>21 A. So I worked at a Bay area store in San Jose,</p> <p>22 California, as a human resources team leader.</p> <p>23 Q. How long did you work at Target?</p> <p>24 A. I'd say about six years, so about 2000 -- I</p> <p>25 started with them in 2007, and then I believe I</p> <p>worked</p> <p>12:01 there until about 2012, I think, so about six-</p> <p>and-a-half</p> <p>02 years.</p>	
5	13:01-13:05	<p>13:01 Q. And what did you do for Manpower Group?</p> <p>02 A. I was a staffing specialist, operations</p> <p>03 specialist.</p> <p>04 Q. How long did you work at Manpower?</p> <p>05 A. About two years.</p>	
6	14:01-15:17	<p>14:01 Okay. So after Manpower, where did you go to</p> <p>02 work next?</p> <p>03 A. I went to work for another staffing company</p> <p>04 called Net Polarity.</p> <p>05 Q. How do you spell that one?</p> <p>06 A. N-E-T, P-O-L-A-R-I-T-Y, I believe.</p> <p>07 Q. Okay. And how long did you work there?</p> <p>08 A. About two months, three months.</p> <p>09 Q. And where did you go after that?</p> <p>10 A. So in March of 2015 I started working for</p> <p>11 Chartwell Staffing Solutions.</p> <p>12 Q. And what was your first job title for Chartwell</p> <p>13 Staffing Solutions?</p> <p>14 A. My first job title there was national HR</p> <p>15 manager.</p> <p>16 Q. And how long were you the national HR</p> <p>manager</p>	

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		<p>17 for Chartwell Staffing Solutions? 18 A. I believe it was about six months, maybe. 19 Q. Okay. And then what was your next job for 20 Chartwell? 21 A. They promoted me to vice president of human 22 resources. 23 Q. So that would have been sometime around 24 September of 2015; is that right? 25 A. Yeah. 15:01 Q. Okay. And then how long did you work as VP of 02 HR for Chartwell after you received that promotion in 03 September of 2015? 04 A. The company laid me off in September of 2016. 05 Q. Okay. So it's fair to say that from 06 approximately September of 2015 to September of 2016 you 07 were the vice president of human resources for Chartwell 08 Staffing Solutions? 09 A. Correct. 10 Q. And what were your job duties as the vice 11 president of human resources for Chartwell Staffing 12 Solutions? 13 A. Well, they were to manage HR processes for our 14 organization throughout our 14 states that we were 15 conducting business. So I had to create processes that 16 were to help align the HR practices throughout the 17 organization.</p>	
7	15:23- 16:02	<p>15:23 How big was Chartwell? 24 A. So it was about 500 -- three to 500 employees, 25 internally. And then I'm not quite a hundred percent 16:01 sure of the temporary workforce, but I believe it was 02 anywhere from eight to ten thousand.</p>	
8	17:05- 17:13	<p>17:05 Q. Okay. And as the vice president of human 06 resources, you were talking about your job duties and you 07 said that you managed the human resources processes for 08 all of the Chartwell companies or locations; is that 09 right? 10 A. Yes. So with a partnership of other chief 11 officers, I was managing and creating processes to help</p>	

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		12 streamline and help with the compliance of the 13 organization, at the time.	
9	18:11- 18:23	18:11 Tell me what your relationship was, or your 12 reporting relationship was, relative to Veronica 13 Martinez. 14 A. So Veronica Martinez, at the time, was a branch 15 manager for the Haywood, California, office. And when 16 she would come across any HR-related concerns or 17 questions, she would reach out to myself and my team. 18 Q. I see. Okay. 19 As part of your job duties at Chartwell, did 20 you help create sort of uniform guidelines or checklists 21 for things that your managers should be doing when 22 looking into claims of termination or harassment? 23 A. Yes. I tried to be a guide and a partner.	Counter designation: 18:07- 18:9. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a)(6). 7. At some point in time, did you also have someone named Veronica Martinez who reported? 9. Veronica Martinez did not report to me.
10	19:02- 19:19	19:02 Q. And what training had you had in how to conduct 03 an investigation up until the point you started working 04 totally? 05 A. The training I had was through previous 06 employers. 07 Q. So like at -- I think you said you worked at 08 Target. 09 A. Yes. 10 Q. Did you receive training from Target about how 11 to conduct an investigation? 12 A. Yes. So Target did train us on how to execute 13 employee relations investigations at a lower level. It 14 wasn't something that was trained on a, like, manager 15 level. 16 Q. Would you agree with the idea that any 17 investigation should be prompt, thorough, and objective, 18 or impartial? 19 A. Yes, I agree with that.	19:16-19. Designated testimony is improper hypothetical lay opinion testimony about human resources' practices in investigation not "rationally based on the witness's perception" and deponent not disclosed as an expert. Fed. R. Evid. 701. Counterdesignation: 19:20- 20:13. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a)(6). 20 Q. Let me ask you this: Are you a member of the 21 Society for Human Resource Managers? 22 A. I was, during that time. 23 Q. Okay. So in 2016,

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			when you were at H -- vice
2			24 president of human
3			resources for Chartwell,
4			you were also
5			25 a member of the Society for Human
6			Resource Managers; is
7			1 that correct?
8			2 A. Yes.
9			3 Q. And have you ever
10			used any of the -- I'll
11			just
12			4 call it SHRM for short,
13			S-H-R-M. Do you understand
14			that
15			5 to be the Society for
16			Human Resource Managers?
17			6 A. Yes, I do understand
18			that acronym.
19			7 Q. Okay. Had you ever
20			relied on, looked at any
21			of
22			8 the SHRM materials
23			relative to
24			investigations?
25			9 A. Yes, I did.
26			10 Q. And you would agree
27			that the SHRM guidelines
28			or
			11 samples also state that

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			investigations need to be prompt, 12 thorough, and impartial, or objective, right? 13 A. Yes, I do.
11	20:19-20:25	20:19 You would agree that it's important, as part of 20 an investigation, to document what information you learn 21 in an investigation? 22 A. Yes. 23 Q. Notetaking is an important part of 24 investigation? 25 A. Yes.	20:19-20:25. Designated testimony is improper hypothetical lay opinion testimony about human resources' practices not "rationally based on the witness's perception" and deponent not disclosed as an expert. Fed. R. Evid. 701. <u>Counterdesignation:</u> 21:1-14. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a)(6).
12	21:15-22:02	21:15 Q. What are the goals that you have in an 16 investigation? What is it you are trying to achieve in 17 an investigation? 18 A. So depending on the investigation or any 19 workplace investigation, my goal, ultimately, is to make 20 sure that we are providing a safe work environment for 21 all people in the organization. 22 Q. And part of providing a safe work environment 23 for all of the employees is to ensure that they have an 24 environment free from any kind of racial slurs or 25 racially insensitive conduct; correct? 22:01 A. Yes. That would be one of many things that we 02 want to prevent.	Designated testimony is improper hypothetical lay opinion testimony about human resources' practices in investigation and workplace environment not "rationally based on the witness's perception" and deponent not disclosed as an expert. Fed. R. Evid. 701.
13	23:10-24:20	23:10 Q. BY MR. ORGAN: So, for example, let's say that 11 someone is offended by use of the N word in the workplace 12 and someone else is not offended by use of the N word in 13 the workplace, the person who is offended by	Designated testimony is improper lay opinion testimony about human resources' practices given hypothetical harassment example and best practices for interviewing not "rationally

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		<p>the use of 14 the N word in the workplace should still be protected 15 regardless of how the other person feels, regardless of 16 how the others feel; correct? 17 A. Correct. 18 Q. Okay. Let's talk a bit more about 19 investigations, in general. 20 When you are trying to be -- conduct a thorough 21 investigation, you would agree that it's important to 22 conduct substantive interviews, meaning to touch on the 23 important issues that are brought up? 24 A. Correct. 25 Q. And would you typically meet with the 24 :01 complainant, first, to get an idea of what issues they 02 are raising? 03 A. Yes. 04 Q. And why do you do that? 05 A. Because they are normally the person that 06 brought it to your attention; so, otherwise, I wouldn't 07 know where to start investigating and who to speak to, if 08 there was anyone else involved. So they are going to 09 come to me with the information that needs to be looked 10 into further, if there is anything else that needs to be 11 looked into. 12 Q. Then after you've interviewed the complainant, 13 who do you typically interview next? 14 A. Any witnesses or any other members named in his 15 statement or her statement. 16 Q. Okay. And then -- 17 And is it true that one of your goals is you 18 want to try to interview all of the witnesses so that you 19 can get a full picture of what has happened? 20 A. Ultimately, yes, that's the goal.</p>	<p>based on the witness's perception" and deponent not disclosed as an expert. Fed. R. Evid. 701.</p>
14	25:03- 25:22	<p>25:03 Q. What are the basic questions that you usually 04 ask in every investigation? 05 A. You know, how has this affected you, or were 06 you -- who are -- is there any witnesses? Basically, we 07 start off with asking for them to tell you a description</p>	<p>Designated testimony is improper hypothetical lay opinion testimony about human resources' practices as to questions asked in an interview not "rationally based on the witness's perception" and</p>

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		<p>08 of, you know, their complaint and what -- how they felt</p> <p>09 during the situation, and if anyone had seen the</p> <p>10 situation, and what would they like to come of them</p> <p>11 coming forward.</p> <p>12 Q. Like what the outcome is?</p> <p>13 A. Yeah, like what would they like for the outcome</p> <p>14 to be, if they had an ideal outcome.</p> <p>15 Q. Do you like to conduct your interviews in</p> <p>16 person?</p> <p>17 A. If possible, yes.</p> <p>18 Q. And why do you like to conduct your interviews</p> <p>19 in person?</p> <p>20 A. I believe that when you have the person sitting</p> <p>21 in front of you, you can get a better understanding of</p> <p>22 what is going on.</p>	<p>deponent not disclosed as an expert. Fed. R. Evid. 701.</p>
15	26:09- 26:16	<p>26:09 Q. And is it your practice to document your</p> <p>10 interviews at the same time that you are doing the</p> <p>11 interview, meaning do you take your notes while you are</p> <p>12 interviewing the person?</p> <p>13 A. I do take notes while interviewing.</p> <p>14 Q. You said earlier sometimes you take handwritten</p> <p>15 notes and sometimes you take notes in your computer.</p> <p>16 A. Correct.</p>	<p>Designated testimony is improper hypothetical lay opinion testimony about human resources' practices on notetaking in interviews not "rationally based on the witness's perception" and deponent not disclosed as an expert. Fed. R. Evid. 701.</p> <p><u>Counterdesignation:</u> 26:17-26:23. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a)(6).</p> <p>17 Q. Did you have any particular practice when you</p> <p>18 were vice president of human resources for Chartwell</p> <p>19 that -- at the Tesla facility, relative to</p>

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			employees at 20 the Tesla facility? 21 A. I don't recall; but if I did, they were 22 probably on paper which then transferred onto the 23 computer.
16	26:24- 27:23	26:24 Q. Okay. And is it your practice to usually come 25 up with a final written report of what your investigation 27:01 has concluded? 02 A. Yes. 03 Q. And why do you want to have a final written 04 report? 05 A. It summarizes the full investigation from 06 beginning to end. 07 Q. And does it typically come to a solution as to 08 what happened? 09 A. That's the goal, ultimately, yes. 10 Q. And then if it's -- there is a determination 11 that inappropriate conduct has occurred, what is the next 12 step? 13 A. We would -- I would discuss it with my partners 14 and possibly take legal advice from our general counsel 15 as to what the next step would be and if there is a form 16 of corrective action that needs to be taken. 17 Q. And when you mentioned your "partners," those 18 are the people like the president of the company at 19 Chartwell; is that correct? 20 A. Yeah, like other -- my HR generalist, general 21 counsel, and also, depending on the situation, I would 22 partner with the branch managers, as they have more 23 background on the employees, like previous history.	Designated testimony is improper hypothetical lay opinion testimony about human resources' practices in preparing reports of investigations not "rationally based on the witness's perception" and deponent not disclosed as an expert. Fed. R. Evid. 701.
17	28:13- 28:19	28:13 Q. BY MR. ORGAN: Okay. So we were -- I was about 14 ready to ask you some questions about your investigations	

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		<p>15 into any matters at the Tesla factory. So let me just</p> <p>16 sort of establish a background. When you were working</p> <p>17 for Chartwell, was Tesla one of the contractors with whom</p> <p>18 Chartwell placed employees?</p> <p>19 A. I believe so.</p>	
18	30:03-32:05	<p>30:03 Q. Okay. To try and help refresh your</p> <p>04 recollection, we're going to show you something that has</p> <p>05 already been marked in this case as Exhibit 37, and</p> <p>06 hopefully that will help you. I don't actually have a</p> <p>07 hard copy of it there.</p> <p>08 For the record, it's Bates stamped Tesla 35 to</p> <p>09 Tesla 37. And it's an email of the two attachments to</p> <p>10 the emails, which are pictures.</p> <p>11 So if you could --</p> <p>12 I think Julianne is going to show you that.</p> <p>13 A. Okay.</p> <p>14 Q. And once you've had a chance to look at it,</p> <p>15 then let me know, and then I'll ask you some follow-up</p> <p>16 questions.</p> <p>17 MS. STANFORD: Do you know how to scroll?</p> <p>18 THE WITNESS: Yes.</p> <p>19 MS. STANFORD: You can scroll down to read the</p> <p>20 rest of the email and then the attachment.</p> <p>21 THE WITNESS: Okay. I've read it.</p> <p>22 Q. BY MR. ORGAN: And does this --</p> <p>23 After you've read Exhibit 37, does that refresh</p> <p>24 your recollection that you previously saw this as part of</p> <p>25 a complaint about conduct at Tesla?</p> <p>31:01 A. I do remember the pictures. And then reading</p> <p>02 through the summary here, I do recall the pictures and</p> <p>03 the specific, like, complaint coming forward.</p> <p>04 Q. Okay. So the pictures are -- the two pictures</p> <p>05 attached to the email, you remember receiving those</p> <p>06 previous, when you were working at Chartwell; is that</p> <p>07 correct?</p> <p>08 A. Yeah, I do. I do remember someone showing them</p> <p>09 to me.</p> <p>10 Q. Were you copied? Was the email sent to you,</p> <p>11 like copied to you? Or how did you see the</p>	

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		<p>email of the 12 pictures? 13 A. I don't remember if it was given to me by the 14 branch or emailed to me. But I do remember seeing this. 15 Q. Okay. And once you received this, did you, 16 then, start an investigation? 17 A. The first thing I did was speak to the branch. 18 Q. Okay. And who did you talk to in the branch? 19 A. I don't remember who it was, specifically. But 20 if I had to recall someone that I would reach out to, it 21 would be Veronica Martinez as the branch manager. 22 Q. Okay. So your typical practice would be to 23 talk to Veronica if something was going on at Tesla, 24 because she was the branch manager covering that area; 25 correct? 32:01 A. Yes. Because they do have the relationship 02 established with the clients and the employees that are 03 currently working there, so we always try to go through 04 them first just because they have that established 05 relationship with them already.</p>	
19	34:12- 39:07	<p>34:1 2 Exhibit 184, for the record, is an eight-page 13 document Bates stamped NS 38 to 45. 14 (Deposition Exhibit 184 was marked for 15 identification.) 16 THE REPORTER: I've given the witness the 17 document. 18 Q. BY MR. ORGAN: Okay. And, Ms. Delgado, if you 19 could, look over the emails. We'll get to the 20 handwritten statements later. You could look at it 21 overall, now, or, if you want, we could just go over the 22 emails, because that's what your questions are going to 23 be about, initially. Okay? 24 A. I'm sorry, can you repeat that? I apologize. 25 Q. Could you please just refer to the first two 35:01 pages of Exhibit 184, which are the emails relative to 02 your investigation? 03 A. Okay. I've read it. The first two pages? 04 Q. Yeah. 05 And so it appears that the email that is at the 06 bottom of the first page and then continues over onto the 07 second page is an email that you sent on or</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>about 08 January 25 of 2016; is that right? 09 A. Yes. That's what it says here. 10 Q. Okay. And that email was sent as part of your 11 job -- 12 One of your job duties is to send emails to 13 people that you work with within the company; is that 14 correct? 15 A. Yes. 16 Q. So you sent the email there on or about 17 January 25, 2016, at 11:07 a.m. Is that right? 18 A. Oh, yes. That's what it says here. 19 Q. And you -- 20 It appears that you attached statements that 21 you had obtained from two of the people who you had 22 interviewed; is that correct? 23 A. Yes. 24 Q. And that -- 25 So you -- at this point in time, by January 25 26:01 of 2016, you had already received the pictures and notice 02 of the complaint by Mr. Owen Diaz; right? 03 A. I believe so. If I conducted this 04 investigation, yes. 05 Q. And then it also appears that you had spoken 06 with Mr. Diaz and Mr. Ramon Martinez; correct? 07 A. Yes. 08 Q. And then you were sending those two statements 09 that you had collected to Veronica Martinez, who is the 10 branch manager for Chartwell in Haywood; right? 11 A. Yes. 12 Q. Is it fair to say that by this time, Monday, 13 January 25, 2016, you had completed your investigation 14 into Mr. Diaz' complaint? 15 A. In reading this email, it seems as if there was 16 some follow-up to be done. But it looks like the results 17 of the investigation had been conducted -- concluded, I 18 apologize, had been concluded. 19 Q. And in terms of the conclusion that you had 20 reached, relative to Mr. Diaz' complaint, you had, in 21 fact, substantiated that at least some of the conduct 22 about which Mr. Diaz had complained was</p>	

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		<p>substantiated; 23 correct? 24 A. Yes. 25 Q. You had confirmed that the drawing that you had 37:01 seen pictures of was, indeed, something that had been put 02 in the workplace near Mr. Diaz; correct? 03 A. Yes. According to this email and the 04 attachments, it seems as if it was found that the picture 05 offended someone, and so we took action. 06 Q. You thought that the picture offended Mr. Owen 07 Diaz who saw it; right? 08 A. Yes. 09 Q. And just so we're clear, the picture -- the 10 offensive pictures that we're talking about are those 11 pictures that you saw in Exhibit 37 which you looked at 12 just a few minutes ago; right? 13 A. Correct. 14 Q. Now, in addition to that, Mr. Diaz said that he 15 was concerned for his safety. That's something he told 16 you; right? 17 A. Yes. 18 Q. And if you look in your email at -- 19 You also were informed that Mr. Diaz did not 20 feel comfortable working with Ramon Martinez; right? 21 A. Right. 22 Q. You stated in your email that you wanted to 23 ensure a safe and harassment-free workplace for all 24 employees working at the Tesla factory; right? 25 A. Uh-huh. Yes. 38:01 Q. Okay. And the reason that you wanted to ensure 02 a safe and harassment-free workplace for all employees is 03 all employees who worked at that Tesla factory are 04 entitled to that harassment-free workplace; right? 05 A. Yes. 06 Q. And if they are -- if employees are exposed to 07 offensive pictures, that undermines a safe and 08 harassment-free workplace, doesn't it? 09 A. Yes. 10 Q. So you also mention in this email that you were</p>	

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		<p>11 going to place Mr. Ramon Martinez on corrective action.</p> <p>12 A. Yes.</p> <p>13 Q. And the reason that you are going to put</p> <p>14 Mr. Martinez on corrective action is that you had</p> <p>15 determined, at least, that Mr. Martinez had placed the</p> <p>16 offensive drawing on the cardboard. Right?</p> <p>17 A. Correct.</p> <p>18 Q. In fact, Mr. Martinez admitted that he put the</p> <p>19 offensive drawing on the cardboard; right?</p> <p>20 A. Correct.</p> <p>21 Q. And he also said, on the second page of your</p> <p>22 email, that Mr. Martinez would be polite -- placed on</p> <p>23 corrective action, with a final warning for harassment in</p> <p>24 the workplace due to offensive behavior; is that correct?</p> <p>25 A. Yes.</p> <p>39:01 Q. And did you draft the final warning for</p> <p>02 Mr. Martinez?</p> <p>03 A. I would hope that I did.</p> <p>04 Q. Okay. It's your practice to, when you are</p> <p>05 getting issued a final warning, to put that into writing,</p> <p>06 isn't it?</p> <p>07 A. Yes, it is.</p>	
20	39:17-40:11	<p>39:17 Let me ask you this question: Were you aware</p> <p>18 that there were other contracting or staffing agencies</p> <p>19 that were at the Tesla facility?</p> <p>20 A. Yes. I was made aware only because I had to</p> <p>21 reach out -- according to this email, I had to reach out</p> <p>22 to another agency to speak to one of their employees that</p> <p>23 was named in this investigation.</p> <p>24 Q. Okay. That was Citistaff?</p> <p>25 A. Yes. According to this email, it was</p> <p>40:01 Citistaff.</p> <p>02 Q. And you also had to reach out to Tesla, too, 03 didn't you?</p> <p>04 A. I did not reach out to Tesla. That would have</p> <p>05 been something I would have partnered with Veronica, the</p> <p>06 branch manager, as she had the established relationship</p> <p>07 with the client.</p> <p>08 Q. So although you didn't directly reach out to</p> <p>09 Tesla, you expected that Veronica Martinez was going to</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>10 do that; correct?</p> <p>11 A. Correct.</p>	
21	40:18-42:13	<p>40:18 Q. With respect to this particular complaint that</p> <p>19 you investigated by Mr. Owen Diaz, let's, if you could,</p> <p>20 turn to the document, the attachment that you have.</p> <p>21 So go to the first attachment, which the Bates</p> <p>22 number at the bottom right is NS 40 to NS 42.</p> <p>23 A. Okay.</p> <p>24 Q. Is that your handwriting on pages NS 40 to NS</p> <p>25 42?</p> <p>41:01 A. Yes, this is.</p> <p>02 Q. Okay. And so had you created this template</p> <p>03 before you met with Mr. Diaz?</p> <p>04 A. The investigation questions?</p> <p>05 Q. Yeah, the investigation questions, the</p> <p>06 typewritten investigation questions on NS 40 to 42?</p> <p>07 A. Yes.</p> <p>08 Q. Okay. So prior to interviewing Mr. Diaz, you</p> <p>09 created the template -- I assume in your office; is that</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 Q. And then did this -- was this sort of your</p> <p>13 standard format that you would use in any investigation?</p> <p>14 A. It's fairly standard.</p> <p>15 Q. Okay. Now, let's look at the top of NS 40.</p> <p>16 There is an asterisk there, and it says, "Spoke to Monica</p> <p>17 Deleon, branch manager, Citistaff. Granted HR VP</p> <p>18 permission to speak to Mr. Omar." Is that what you</p> <p>19 wrote?</p> <p>20 A. Yes.</p> <p>21 Q. And why did you write that?</p> <p>22 A. Because Mr. Omar is not an employee of</p> <p>23 Chartwell Staffing Solutions. And in order for us to</p> <p>24 speak to an employee outside of our, you know, company,</p> <p>25 out of -- I thought it would be -- the right thing to do</p> <p>42:01 is to reach out to the employer and get permission to</p> <p>02 speak to their employee.</p> <p>03 Q. And just so we're clear, for the record, I</p> <p>04 think you meant, when you said Mr. Omar, you meant</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>05 Mr. Owen Diaz; correct?</p> <p>06 If you go back to your email, you can see it</p> <p>07 says Mr. Owen, not Mr. Omar?</p> <p>08 A. Okay. Yeah. Maybe that was a typo on my part.</p> <p>09 Q. Okay.</p> <p>10 Where did you meet with Mr. Owen Diaz when you</p> <p>11 interviewed him?</p> <p>12 A. I did not meet in person with this individual.</p> <p>13 If I did speak to them, it was over the phone.</p>	
22	43:07-45:11	<p>43:07 Q. But you talked to Mr. Diaz on the 25th -- on</p> <p>08 January 25, 2016; is that correct?</p> <p>09 A. Correct.</p> <p>10 Q. And it appears that you talked to him</p> <p>11 sometime -- either at 9:58 a.m. or 10:00 a.m.; is that</p> <p>12 right?</p> <p>13 A. Correct.</p> <p>14 Q. And that's your standard practice, to put the</p> <p>15 time and date, when you are talking to someone?</p> <p>16 A. Yes.</p> <p>17 Q. And you recall that with Mr. Diaz, you talked</p> <p>18 to Mr. Diaz over the phone; is that right?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. And is there some reason that you didn't</p> <p>21 go meet with Mr. Diaz in person?</p> <p>22 A. I'm not aware of there being --</p> <p>23 Either I was physically not in the state -- I'm</p> <p>24 not quite sure. I don't remember -- recall the reason</p> <p>25 why I didn't meet with him in person.</p> <p>44:01 Q. Okay. Then if you could, please, read to -</p> <p>-</p> <p>02 into the record what you wrote under your question number</p> <p>03 one, what occurred.</p> <p>04 A. "Working over at elevator one, because he is</p> <p>05 the lead at elevator one. Palletwriter/cardboard bale</p> <p>06 wrapped in wire. When he went to lift the bale, he said</p> <p>07 that the picture was there for him to see. He took a</p> <p>08 picture of it right away and called Michael Wheeler and</p> <p>09 Israel, and they both took pictures attached."</p> <p>10 Q. So based on your conversation with Mr. Diaz --</p> <p>11 strike that.</p>	<p>Counterdesignation: 45:12-22. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a)(6).</p> <p>12 Q. Ramon Martinez was a Chartwell employee; is</p> <p>13 that right?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And Mr. Martinez was a lead in the</p> <p>16 recycling department at Tesla; is that right?</p> <p>17 A. I'm not quite sure what his title was.</p> <p>18 Q. Okay. But he had some type of supervisory</p> <p>19 duties at the Tesla factory; is that correct?</p> <p>20 A. I can't say for sure that -- what his title</p> <p>21 was, so I wouldn't be sure to say that he was a</p> <p>22 supervisor. I just have whatever is on paper here.</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>12 Let me ask you this: In terms of your</p> <p>13 handwriting here, is that a direct quote of Mr.</p> <p>Diaz, or</p> <p>14 is that your own paraphrasing of what he said?</p> <p>15 A. I'm paraphrasing as he's speaking to me.</p> <p>16 Q. Okay. So even though you are taking notes</p> <p>as</p> <p>17 Mr. Diaz is talking to you, it's not an exact</p> <p>quote of</p> <p>18 what he told you; correct?</p> <p>19 A. No. If it was an exact quote, I would have put</p> <p>20 it in quotations. As they are speaking to me, I'm</p> <p>trying</p> <p>21 to get as much information on paper as possible.</p> <p>22 Q. I see. So your practice is if you are actually</p> <p>23 quoting someone, you put it in quotation</p> <p>marks; is that</p> <p>24 correct?</p> <p>25 A. Correct.</p> <p>45:01 Q. Okay. And since none of the words in</p> <p>response</p> <p>02 to question number one, what occurred, is in</p> <p>quotation</p> <p>03 marks, it's your understanding that that is a</p> <p>paraphrase</p> <p>04 of what Mr. Diaz told you over the phone;</p> <p>correct?</p> <p>05 A. Yes.</p> <p>06 Q. Now, let's go to question two, "Who</p> <p>committed</p> <p>07 the alleged harassment?" What did you write</p> <p>there?</p> <p>08 A. "The alleged harassment was committed by</p> <p>09 Ramon."</p> <p>10 Q. And the Ramon there is Ramon Martinez;</p> <p>correct?</p> <p>11 A. Correct.</p>	
23	46:05- 47:04	<p>46:05 Q. Okay. Then let's go to item number</p> <p>three:</p> <p>06 "When and where did the harassment occur?"</p> <p>07 What did you write in response to that?</p> <p>08 A. "The drawing was done on the cardboard from</p> <p>the</p> <p>09 recycle center."</p> <p>10 Q. Okay. And you had seen -- at this point in</p> <p>11 time, you had already seen the picture of the</p> <p>drawing,</p> <p>12 too; correct?</p> <p>13 A. I would assume so.</p> <p>14 Q. Okay. And let's go to item number four:</p> <p>How</p> <p>15 often has the offensive behavior occurred?</p> <p>16 What did Mr. -- what did you record Mr. Diaz</p> <p>17 told you there?</p> <p>18 A. "Owen mentioned history that happened in</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>19 elevator. HR was not aware nor was Veronica, branch</p> <p>20 manager. The email was sent to Wayne Jackson, supervisor."</p> <p>21</p> <p>22 Q. Mr. Diaz told you about the fact that he had</p> <p>23 had a history of inappropriate conduct by Ramon Martinez;</p> <p>24 right?</p> <p>25 A. Yes.</p> <p>47:01 Q. And Mr. Diaz also told you that he had sent an</p> <p>02 email to Wayne Jackson, a supervisor, about that prior</p> <p>03 inappropriate conduct; correct?</p> <p>04 A. As stated here, yes.</p>	
24	47:16-47:19	<p>47:16 Q. BY MR. ORGAN: Did you speak to Mr. Wayne</p> <p>17 Jackson about what the prior inappropriate conduct was?</p> <p>18 MS. JENG: Objection: Misstates the evidence.</p> <p>19 THE WITNESS: Not that I recall.</p>	
25	48:03-52:06	<p>48:03 "And why didn't you follow up with Wayne</p> <p>04 Jackson about the prior inappropriate conduct?")</p> <p>05 THE WITNESS: I did not follow up with him,</p> <p>06 because that would be something that I would have asked</p> <p>07 the branch manager to follow up with.</p> <p>08 Q. BY MR. ORGAN: Okay. So your best recollection</p> <p>09 is that you would have told Veronica Martinez to follow</p> <p>10 up with Wayne Jackson about any prior inappropriate</p> <p>11 conduct; correct?</p> <p>12 A. Correct. They have the relationship with the</p> <p>13 client so, therefore, I would have reached out to her and</p> <p>14 had her reach out to the client to speak to this person.</p> <p>15 Q. And as a trained investigator, you would agree</p> <p>16 that it would be important to find out what that history</p> <p>17 of inappropriate conduct that had been directed at</p> <p>18 Mr. Diaz by Mr. Martinez was; right?</p> <p>19 A. Correct.</p> <p>20 Q. And certainly before you could conclude a</p> <p>21 complete investigation into Mr. Diaz' allegations, you</p> <p>22 would want to know all of what had happened between him</p> <p>23 and Ramon Martinez; right?</p> <p>24 A. Correct.</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>25 Q. Mr. -- 49:01 As you indicated in your email to Veronica 02 Martinez, you indicated that Mr. Diaz had said that he 03 was -- he didn't feel safe; right? 04 A. Yes, based on this email. 05 Q. And so if Mr. Martinez had engaged in conduct 06 over a period of months that had been threatening in 07 nature, that would be important evidence relative to 08 determining how widespread the harassment was; right? 09 MS. JENG: Objection: Lacks foundation. 10 THE WITNESS: Ultimately. 11 Q. BY MR. ORGAN: Did you -- 12 A. Yes. 13 Q. Ultimately yes? 14 A. Uh-huh, yes. 15 Q. Now, do you recall whether or not Veronica 16 Martinez ever got back to you about what the history was 17 between Ramon Martinez and Owen Diaz? 18 A. No, I do not recall. 19 Q. If you had received information back from 20 Veronica Martinez, would you have put that in writing 21 somewhere? 22 A. In terms of my professional habits, I would 23 think that I would have. 24 Q. Okay. Let's go to your next question here, 25 question number five: How did it affect you and how did 50:01 you react? 02 Please tell us what you wrote there. 03 A. "My stomach dropped." 04 Q. So Mr. Martinez told you that his stomach 05 dropped; is that correct? 06 A. Yes, according to my notes. 07 Q. If you look at the -- if you look at this 08 document a little closer, it looks like something has 09 been whited out before "My stomach dropped." Do you see 10 that? 11 A. Yes. 12 Q. Do you know what it was that you wrote there 13 that was then whited out? 14 A. I don't recall what it was, but, more than 15 likely, it was probably a mistake, so I wanted to make 16 sure the paperwork looked fairly clean; but I don't 17 recall.</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1		18 Q. Okay. Was it you who did the whiting out	
2		or	
3		19 did someone else white out whatever was	
4		written before	
5		20 "My stomach dropped"?	
6		21 A. Honestly, I don't remember.	
7		22 Q. And if you look back at page one of this	
8		23 report, which is on Bates number NS 40, look	
9		up at the	
10		24 top in your response under question one.	
11		When you were	
12		25 recording Mr. Diaz' response there, your	
13		practice there	
14		51:01 was just kind of write over what you had	
15		written before.	
16		02 Do you see that in the second line there?	
17		03 A. Yes. Yes, I see that.	
18		04 Q. Do you think that maybe you wrote over	
19		05 something in that -- the first bit of your	
20		response to	
21		06 question five and that maybe someone else	
22		whited it out	
23		07 later?	
24		08 MS. JENG: Objection: Calls for speculation	
25		09 and lacks foundation.	
26		10 THE WITNESS: Yeah. I'm not sure why that is	
27		11 whited out or why that was done, to be honest.	
28		12 Q. BY MR. ORGAN: Sure. So you don't -- as	
		you	
		13 stand here today testifying about the	
		document, you have	
		14 no recollection one way or the other whether	
		you whited	
		15 it out or whether someone else did; correct?	
		16 A. Yes. I don't remember, and I don't know why	
		17 that would have been done.	
		18 Q. Okay. Other than Mr. Diaz telling you how	
		it	
		19 affected him by his stomach dropping out, do	
		you recall	
		20 anything else that Mr. Diaz said?	
		21 A. I do not recall.	
		22 Q. Isn't it true, though, that based on what	
		23 Mr. Diaz told you, you understood him to be	
		very upset	
		24 about the conduct that he had been exposed to	
		by Ramon	
		25 Martinez; right?	
		52:01 A. Yes, he was bothered.	
		02 Q. And based on your statement in the email	
		that	
		03 you sent, not only was Mr. Diaz bothered but	
		that he was	
		04 concerned about his personal safety from Mr.	
		Martinez;	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>05 right?</p> <p>06 A. Correct.</p>	
26	53:01-59:05	<p>53:01 Q. BY MR. ORGAN: You also stated, in response to</p> <p>02 question number four, that Mr. Diaz was complaining about</p> <p>03 a history of inappropriate conduct in the elevator;</p> <p>04 right?</p> <p>05 THE WITNESS: Yes, according to --</p> <p>06 MS. KUMAGAI: Objection: Misstates the</p> <p>07 document.</p> <p>08 This is Susan.</p> <p>09 Q. BY MR. ORGAN: I'm sorry, your answer was</p> <p>10 "yes;" is that correct?</p> <p>11 A. Yes. According to my notes, he had mentioned</p> <p>12 history that happened in the elevator.</p> <p>13 Q. Okay. Now, let's go to question six.</p> <p>14 Your question there is: "Has your job been</p> <p>15 affected?"</p> <p>16 Please state what you wrote in response to</p> <p>17 question six.</p> <p>18 A. "Yes. I look around behind my back when I</p> <p>19 pick</p> <p>20 up balers and I don't feel safe."</p> <p>21 Q. Okay. So Mr. Diaz had communicated to you the</p> <p>22 concept that he was concerned for his safety;</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. And this was a concern to you, wasn't it?</p> <p>26 A. Yes.</p> <p>27 Q. And that's why you recommended taking</p> <p>54:01 corrective action against Mr. Martinez,</p> <p>28 because he had</p> <p>02 engaged in conduct that had made Mr. Diaz feel unsafe and</p> <p>03 uncomfortable in the workplace; right?</p> <p>04 A. Correct.</p> <p>05 Q. Now let's go to number seven: Were there</p> <p>any</p> <p>06 other people present when the incident occurred?</p> <p>07 Please state what you wrote in response to that</p> <p>08 question.</p> <p>09 A. "No. Just myself."</p> <p>10 Q. Now, let me ask you: In terms of the notes</p> <p>11 here by -- that you took, which are these three</p> <p>12 pages of</p> <p>13 notes from Mr. Diaz, NS 40, 41, and 42, these</p> <p>are all</p> <p>14 notes that you were taking in the course of</p> <p>your job</p> <p>15 duties conducting an investigation for</p>	53:1-12: Cumulative and speculative testimony. Fed. R. Evid. 401-403.

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>Chartwell; 15 correct? 16 A. That is correct. 17 Q. And the things that you were recording here 18 were statements that were given to you at or about the 19 time that you created the document, which was 20 approximately 10:00 a.m. on January 25 of 2016; correct? 21 A. That is correct. 22 Q. And you were trying to record your notes as 23 accurately as you possibly could? 24 A. Correct. That is correct. 25 Q. And that's your typical business practice is to 55:01 try to record as accurately as you can; right? 02 A. Yes. 03 Q. Okay. Let's go on to question number eight on 04 page NS 42. 05 The question is: Are there any other notes, 06 physical evidence or other documentation to support the 07 harassment claim? 08 And what did you write in response to that 09 question? 10 A. "Yes, the drawing on the cardboard and the 11 pictures we took and my email that I sent to client." 12 Q. Okay. And was there a reason that you didn't 13 attach the email and the pictures to your report that you 14 were sending to Veronica Martinez? 15 A. Not that I can recall. 16 Q. In terms of the scope of evidence, though, that 17 you reviewed for your investigation, that scope of 18 evidence would have included the two statements that you 19 got, one from Mr. Diaz and one from Mr. Martinez, and 20 then, also, the email and the pictures; correct? 21 A. Correct. 22 Q. And then other than your interviews with 23 Mr. Diaz and Mr. Martinez, you did not interview anybody 24 else relative to what happened to Mr. Diaz in the 25 workplace; right? 56:01 A. Correct. 02 Q. But it is fair to say that at least you talked</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>03 to Veronica Martinez about things related to this</p> <p>04 complaint by Mr. Diaz? Right?</p> <p>05 A. I did talk to her, yes.</p> <p>06 Q. You didn't take any notes relative to your</p> <p>07 conversation with Ms. Martinez; correct?</p> <p>08 A. No, I did not.</p> <p>09 Q. Do you know whether or not Ramon Martinez and</p> <p>10 Veronica Martinez were related in any way?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. Okay. My question is a little broader. Do you</p> <p>13 actually know whether they are related or not?</p> <p>14 A. No, I do not.</p> <p>15 Q. Okay. Let's go to question number nine:</p> <p>16 "Do you know any other pertinent information?"</p> <p>17 What did you record in response to that?</p> <p>18 A. "No."</p> <p>19 Q. Now, I notice that you put the "no" somewhat</p> <p>20 indented, unlike your other written responses. Do you</p> <p>21 know if there was something to the left of "no" that was</p> <p>22 whited out?</p> <p>23 A. Not that I'm aware of or recall.</p> <p>24 Q. Okay. Let's go to question ten which says:</p> <p>25 "How would you like to see the information resolved?"</p> <p>57:01 What did you report in response to that?</p> <p>02 A. "He should be terminated. I do not trust him."</p> <p>03 Q. So Mr. Diaz communicated to you that he didn't</p> <p>04 feel like he should have to work with Mr. Martinez again;</p> <p>05 correct?</p> <p>06 A. Based off this, yes.</p> <p>07 Q. And what did you say to Mr. Diaz in response to</p> <p>08 him saying that he wanted Ramon Martinez terminated?</p> <p>09 A. I don't recall what I said to him.</p> <p>10 Q. Okay. Let's go to the last -- the last</p> <p>11 question: For additional notes.</p> <p>12 What did you record there?</p> <p>13 A. "Afraid of retaliation. Sent an email with</p> <p>14 picture to client supervisors. Feel that picture was</p> <p>15 racial statement, jigaboo."</p> <p>16 Q. Okay. So let's go through those one by one.</p> <p>17 These are other things that Mr. Diaz told you during the</p> <p>18 course of your interview; is that correct?</p> <p>19 A. Yes.</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>20 Q. And do you remember anything else other than</p> <p>21 the fact that Mr. Diaz told that you he was afraid of</p> <p>22 being retaliated against?</p> <p>23 A. Not that I recall.</p> <p>24 Q. Did you ask Mr. Diaz why he was afraid of</p> <p>25 retaliation?</p> <p>58:01 A. Possibly, but I don't recall what questions I</p> <p>02 had for him.</p> <p>03 Q. And you didn't record the reason why Mr. Diaz</p> <p>04 was afraid of retaliation, then?</p> <p>05 A. No, I did not.</p> <p>06 Q. The next bullet you have there is: "Sent an</p> <p>07 email picture to client supervisors."</p> <p>08 Did you ask Mr. Diaz what he meant by that?</p> <p>09 A. I don't recall what I asked him.</p> <p>10 Q. Okay. And then let's go to the last bullet</p> <p>11 point you have there: "Feel that picture was racial</p> <p>12 statement, jigaboo."</p> <p>13 In terms of Mr. Diaz, he communicated to you</p> <p>14 that he believed the picture we looked at before in</p> <p>15 Exhibit 37 was a racial statement; correct?</p> <p>16 A. According to this, yes.</p> <p>17 Q. And if you remember, the picture had,</p> <p>18 underneath it, the word "Booo," B-O-O-O; remember that?</p> <p>19 A. I'm sorry, can you repeat that, please?</p> <p>20 Q. If you remember, the picture in Exhibit 37,</p> <p>21 that you saw, had B-O-O-O under it, "Booo;" right?</p> <p>22 A. Can I see it again, please? Sorry.</p> <p>23 Q. Sure.</p> <p>24 MR. ORGAN: Julianne, can you please show that</p> <p>25 to her?</p> <p>59:01 THE WITNESS: Yes. I do see the picture and it</p> <p>02 says B-O-O-O.</p> <p>03 Q. BY MR. ORGAN: Right. Mr. Diaz told you that</p> <p>04 he interpreted that to mean jigaboo; correct?</p> <p>05 A. Yes. Based off my notes, he did.</p>	
27	59:16- 59:20	<p>59:16 Q. If you had questioned his credibility, though,</p> <p>17 that would have been something you would have noted,</p> <p>18 right?</p> <p>19 A. Yes. I would have made documentation of that</p> <p>20 somewhere in my notes.</p>	<p>Counterdesignation: 59:6-15. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a)(6).</p> <p>6 Q. Okay. When you talked</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>to Mr. Diaz over the</p> <p>7 phone, did he seem</p> <p>credible, to you?</p> <p>8 A. I don't question</p> <p>credibility when I'm</p> <p>9 interviewing. I take</p> <p>every investigation</p> <p>neutral. So at</p> <p>10 the time of me taking</p> <p>notes, I always take every</p> <p>11 investigation</p> <p>seriously. So I can't</p> <p>remember or recall</p> <p>12 that I didn't take him</p> <p>seriously. I just -- when</p> <p>I</p> <p>13 document, I'm assuming</p> <p>that anything someone is</p> <p>telling</p> <p>14 me is -- I'm trusting</p> <p>them with the information</p> <p>they are</p> <p>15 giving me.</p>
28	60:06- 60:14	<p>60:06 Q. I see. So if you look at the form, the</p> <p>07 handwriting on pages 43 to 45, that's not your</p> <p>08 handwriting; is that correct?</p> <p>09 A. Right, that is not.</p> <p>10 Q. It appears that this form, pages 43 to 45 of</p> <p>11 Exhibit 184, was actually handed to Mr.</p> <p>Martinez for him</p> <p>12 to fill it out; correct?</p> <p>13 A. It seems as if this is what he filled out, not</p> <p>14 what I would have written, if I was investigating</p> <p>him.</p>	<p><u>Counterdesignation:</u> 60:15-20.</p> <p>Rule of completeness. Fed. R.</p> <p>Evid. 106; Fed. R. Civ. P.</p> <p>32(a)(6).</p> <p>15 Q. Okay. And in terms</p> <p>of the form itself,</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>though,</p> <p>16 these are the standard questions that you ask of people</p> <p>17 who have been accused of inappropriate conduct; correct?</p> <p>18 A. Correct.</p> <p>19 Q. Or harassment?</p> <p>20 A. Correct.</p>
29	60:21-62:16	<p>60:21 Q. And just so we're clear, based on the forms</p> <p>22 that you have here, the form that was given to Mr. Diaz</p> <p>23 and then the form that was given to Mr. Ramon Martinez,</p> <p>24 you considered this investigation to be an investigation</p> <p>25 into harassing conduct; correct?</p> <p>61:01 A. Correct.</p> <p>02 Q. So in terms of the handwriting in response to</p> <p>03 question one, that is Mr. Martinez' handwriting, as far</p> <p>04 as you know; correct?</p> <p>05 A. Yes. As far as I know, this was answered by</p> <p>06 the employee.</p> <p>07 Q. In fact, all of the handwriting that is on</p> <p>08 pages 43 to 45 of Exhibit 184, that is all Mr. Martinez'</p> <p>09 handwriting, as far as you know, right?</p> <p>10 A. Yes. I mean, as far as I know, that's his</p> <p>11 name, and he signed it, and he filled everything out.</p> <p>12 But I wasn't there, so I'm not for sure he's the one that</p> <p>13 wrote it. But according to this, it seems he was the one</p> <p>14 that responded.</p> <p>15 Q. Why did Mr. Martinez fill out the form instead</p> <p>16 of you interviewing?</p> <p>17 A. I do not recall.</p> <p>18 Q. You mentioned earlier that your standard</p> <p>19 practice is to interview people in person, when possible;</p>	<p>61:18- 62:16: Designated testimony is improper hypothetical lay opinion testimony about human resources' practices on witness preparing his own statement not "rationally based on the witness's perception" and deponent not disclosed as an expert. Fed. R. Evid. 701. It also lacks foundation because deponent did not participate in taking Ramon Martinez's statement. Fed. R. Evid. 602.</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>20 right?</p> <p>21 A. Correct.</p> <p>22 Q. And if you can't interview them in person, then</p> <p>23 your next procedure would be to interview them over the</p> <p>24 phone; right?</p> <p>25 A. Correct.</p> <p>62 :01 Q. It's preferable to interview people in person,</p> <p>02 because then you can see their demeanor and get a better</p> <p>03 idea of whether they are telling the truth or not; right?</p> <p>04 A. You would hope so, yes.</p> <p>05 Q. And then in terms of having someone fill out</p> <p>06 the form themselves, why would you do that?</p> <p>07 A. Honestly, I don't recall being there when he</p> <p>08 filled this form out. I honestly don't remember why he</p> <p>09 filled it out.</p> <p>10 Q. Having Mr. Ramon Martinez fill out the form</p> <p>11 himself, that did not comport with, certainly, your best</p> <p>12 practices for conducting an investigation; correct?</p> <p>13 MS. JENG: Objection: Lacks foundation.</p> <p>14 THE WITNESS: Correct.</p> <p>15 Q. BY MR. ORGAN: I'm sorry, what was your answer?</p> <p>16 A. "Correct."</p>	
30	63:15-64:01	<p>63:15 Q. Now, if you look at the second page of</p> <p>16 Mr. Martinez' notes, Bates stamped NS 44, under question</p> <p>17 five, he identifies two people, I think Israel, maybe</p> <p>18 Zonriga, and Michael Wheeler, as people who also were</p> <p>19 there observing the picture. Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Did you interview either Israel or Michael</p> <p>22 about what happened?</p> <p>23 A. I don't recall if we did or not.</p> <p>24 Q. You haven't seen any interview notes with</p> <p>25 Mr. Wheeler or Israel, have you?</p> <p>64:01 A. Not that I can recall.</p>	<p>Counterdesignation: 62:23-63:14. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a)(6).</p> <p>23 In terms of the</p> <p>receiving of this document</p> <p>24 which was filled out by</p> <p>Mr. Martinez, you at least</p> <p>25 reviewed it after Mr. Martinez had filled it out;</p> <p>1 correct?</p> <p>2 A. Yes.</p> <p>3 Q. And that was part of</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>your investigation;</p> <p>4 correct?</p> <p>5 A. Correct.</p> <p>6 Q. So when you reviewed</p> <p>Mr. Martinez' notes, one</p> <p>7 of the things you would</p> <p>have been looking for was</p> <p>if</p> <p>8 there was additional</p> <p>information that you</p> <p>needed to</p> <p>9 follow up on; correct?</p> <p>10 A. Correct.</p> <p>11 Q. And one of the</p> <p>things you noted was the</p> <p>fact</p> <p>12 that Mr. Martinez</p> <p>admitted that he drew the</p> <p>offensive</p> <p>13 picture; correct?</p> <p>14 A. Correct.</p>
31	64:14- 64:24	<p>64:14 Q. So Mr. Martinez told Israel, based on his</p> <p>15 statement you received, that he drew the</p> <p>drawing;</p> <p>16 correct?</p> <p>17 A. Correct.</p> <p>18 Q. And then he recorded here that Owen was</p> <p>really</p> <p>19 upset about it; right?</p> <p>20 A. Yes.</p> <p>21 Q. And so you knew, based on both statements,</p> <p>the</p> <p>22 statement by Mr. Diaz and the statement by</p> <p>Mr. Martinez,</p> <p>23 that this incident really upset Mr. Diaz;</p> <p>correct?</p>	<p><u>Counterdesignation:</u> 64:3-64:20; 64:25-65:10. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a)(6).</p> <p><u>64:3-64:20</u></p> <p>3 Now, if you go to the</p> <p>last page of this,</p> <p>4 Mr. Martinez, about, I</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			
2		24 A. Yes. According to these notes.	don't know, five lines --
3			six
4			5 lines down, says, "I say
5			it was me."
6			6 That was -- he was
7			admitting that he had made
8			7 the drawing; correct?
9			8 A. Which page is that?
10			9 Q. This is the last
11			page, Bates stamped NS 45.
12			10 A. Okay. Which line
13			were you looking at?
14			11 Q. It's the sixth line
15			down, just after where it
16			12 says "bale of
17			cardboard. I say it was
18			me."
19			13 A. Yes. I see it now.
20			14 Q. So Mr. Martinez told
21			Israel, based on his
22			15 statement you received,
23			that he drew the drawing;
24			16 correct?
25			17 A. Correct.
26			18 Q. And then he recorded
27			here that Owen was really
28			19 upset about it; right?
			20 A. Yes.

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p><u>64:25-65:10</u></p> <p>25 Q. If you go down about two-thirds of the way 1 down -- let's see, there is a part -- do you see the part 2 where it says "white people"?</p> <p>3 A. Yes, I see that.</p> <p>4 Q. He's allegedly quoting Mr. Diaz where he says:</p> <p>5 "White people use it for other purposes, but he 6 understood that coming from me, it" -- I think he meant 7 to say "not be bad." 8 You knew that that contradicted what Mr. Diaz 9 told you; correct?</p> <p>10 A. Yes.</p>
32	65:11- 65:17	<p>65:11 Q. Mr. Diaz wanted Mr. Martinez fired; right? 12 Mr. Diaz wanted Mr. Martinez fired? 13 A. Mr. Diaz wanted Mr. Martinez fired, yes. 14 Q. And the reason that Mr. Diaz told you he wanted 15 Mr. Martinez fired was because he didn't feel safe based 16 on the conduct that Mr. Martinez had engaged in; correct? 17 A. Correct.</p>	
33	67:15- 67:19	<p>67:15 You knew that Mr. Martinez' statement about 16 Mr. Diaz not thinking that the picture was bad</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>was false, 17 based on Mr. Diaz' own statement to you and his email; 18 correct? 19 A. Correct.</p>	
34	69:03- 70:03	<p>69:03 After you had received statements from the 04 witnesses and the email with the two pictures, and you 05 had concluded your investigation. You determined that 06 Mr. Martinez had engaged in conduct that Mr. Diaz had 07 considered harassing; right? 08 A. Correct. 09 Q. And the conduct that Mr. Diaz considered 10 harassing, Mr. Diaz also told you that that conduct he 11 thought was racially motivated; correct? 12 A. Correct. 13 Q. With respect to what you did after you received 14 the two statements and the email with attached pictures, 15 did you create a final kind of report containing 16 findings? 17 A. I can't recall. 18 Q. It would have been your typical practice to do 19 that; right? 20 A. Yes. 21 Q. To create a report? 22 A. Yes. 23 Q. Okay. 24 You did -- 25 It is fair to say that after you completed your 70:01 investigation, you recommended discipline for 02 Mr. Martinez; right? 03 A. Yes.</p>	<p><u>Counterdesignation:</u> 70:4-70:13. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a)(6).</p> <p>4 Q. And what was the discipline that you 5 recommended?</p> <p>6 A. I, personally, don't recall. But on this 7 email, it states my recommendation of corrective action.</p> <p>8 Q. Okay. What was the corrective action that you 9 stated in your email that should be applied to Mr. Ramon 10 Martinez for his harassing conduct?</p> <p>11 A. My recommendation was to place him on 12 corrective action with a final warning for harassment in 13 the workplace due to offensive behavior.</p>
35	70:14- 70:16	<p>70:14 Q. Why wasn't Mr. Martinez recommended for 15 termination?</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		16 A. I do not recall.	
36	71:06- 71:09	71:06 Q. BY MR. ORGAN: Were you aware of any kind of 07 history of inappropriate conduct by Mr. Diaz, at the time 08 you conducted your investigation in January of 2016? 09 A. Not that I can recall.	
37	72:08- 72:16	72:08 You never had asked Mr. Martinez whether he had 09 engaged in any kind of threatening conduct toward 10 Mr. Diaz previously; right? 11 MS. KUMAGAI: Objection: Assumes facts. 12 THE WITNESS: I don't recall speaking to the 13 employee. 14 Q. BY MR. ORGAN: So you never asked him that 15 question; right? 16 A. No, I did not ask.	Lacks foundation, unduly prejudicial because deponent never spoke to Ramon Martinez. Fed. R. Evid. 403, 602.
38	73:07- 73:23	73:07 Mr. Diaz communicated to you that he felt like 08 the picture was a racial statement; right? He told you 09 that? 10 A. Yes. 11 Q. If you look at page three of your notes on 12 that, he mentioned that -- Mr. Diaz mentioned to you that 13 he thought the "Booo" referred to "jigaboo," which is a 14 racial slur; right? 15 A. Correct. 16 Q. Mr. Diaz also mentioned to you that he looks 17 around behind his back when he picks up bales and he 18 didn't feel safe; right? 19 A. Yes. 20 Q. Mr. Diaz communicated to you that he thought 21 that he wanted Mr. Diaz -- he wanted Mr. Martinez 22 terminated, because he didn't trust him; right? 23 A. Correct.	Counterdesignation: 73:24-74:1, 74:4-74:12, 74:19-20. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a)(6). 24 Q. So that led you at least to believe that 25 Mr. Diaz perceived there to be some kind of threat by 1 Mr. Martinez toward Mr. Diaz; correct? 4 THE WITNESS: I can't personally say how he 5 felt, in summarizing all of this. I just go based on the 6 information he's telling me at the time when I'm writing 7 down what he is saying to me. And as written

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>here, it's</p> <p>8 broken up by question,</p> <p>specifically, how he felt</p> <p>during</p> <p>9 the time that he was</p> <p>speaking to me.</p> <p>10 Q. BY MR. ORGAN: But</p> <p>the information that you</p> <p>11 received from Mr. Diaz</p> <p>certainly communicated to</p> <p>you that</p> <p>12 Mr. Diaz felt threatened in January</p> <p>of 2016, didn't he?</p> <p>19 THE WITNESS: He never</p> <p>used the words "threat,"</p> <p>20 so that's not what is in my notes.</p>
39	75:08- 76:09	<p>75:08 "But certainly someone who is feeling a concern</p> <p>09 for his safety is communicating a message to</p> <p>you, a</p> <p>10 trained HR professional, that they feel</p> <p>threatened;</p> <p>11 right?")</p> <p>12 MS. JENG: Same objections.</p> <p>13 MS. KUMAGAI: Same objections here, too, as</p> <p>14 well.</p> <p>15 THE WITNESS: What he was communicating to</p> <p>me</p> <p>16 was that he was concerned for his safety in the</p> <p>17 workplace, and that's what we were looking into,</p> <p>as well</p> <p>18 as feeling harassed. Based on the -- based on our</p> <p>HR</p> <p>19 policies and guidebook, those were the categories</p> <p>that</p> <p>20 fit, aligned with this; and that's why we looked</p> <p>into it.</p> <p>21 Q. BY MR. ORGAN: Okay. So based on the</p> <p>22 harassment about which Mr. Diaz was</p> <p>complaining, he at</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>23 least expressed to you a concern for his safety; right?</p> <p>24 A. Correct.</p> <p>25 Q. What did you do --</p> <p>76:01 What steps did you take to protect Mr. Diaz</p> <p>02 from further harassment by Mr. Martinez?</p> <p>03 A. I don't recall. But based on the information</p> <p>04 here, I did ask the branch to coordinate with the client</p> <p>05 on being able to make reasonable accommodations, if</p> <p>06 possible, to not have them work together.</p> <p>07 Q. Do you know if that was communicated in writing</p> <p>08 in any way to Tesla?</p> <p>09 A. Not that I'm aware of.</p>	
40	76:14- 78:19	<p>76:14 Do you know whether or not the idea of not</p> <p>15 having Mr. Diaz have to work with Mr. Martinez, whether</p> <p>16 or not that idea was ever communicated in writing to</p> <p>17 Tesla or any other contractor working at the factory in</p> <p>18 Freemont, Tesla factory?</p> <p>19 A. Not that I can recall.</p> <p>20 Q. And what did you do to protect Mr. Diaz against</p> <p>21 retaliation he said he was concerned about?</p> <p>22 A. I do not recall what was told or what</p> <p>23 arrangements were made.</p> <p>24 Q. Was there any kind of meeting between the</p> <p>25 different HR people in the different contracting agencies</p> <p>77:01 in Tesla to talk about what should happen to try to</p> <p>02 protect Mr. Diaz against further harassment or</p> <p>03 retaliation?</p> <p>04 MS. KUMAGAI: Objection: Vague and overbroad.</p> <p>05 THE WITNESS: Not that I can recall.</p> <p>06 Q. BY MR. ORGAN: Okay. And did you have any</p> <p>07 meetings with Wayne Jackson at nextSource about what</p> <p>08 steps could be taken to protect Mr. Diaz against any kind</p> <p>09 of further harassment or discrimination?</p> <p>10 A. Not that I can recall.</p> <p>11 Q. Did you have any contact with Monica Deleon</p> <p>12 about what steps could be taken to protect Mr. Diaz</p> <p>13 against further harassment or retaliation?</p> <p>14 A. Not that I can recall.</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>15 Q. Did you have any meetings or communications</p> <p>16 with Mr. Otero, who was the manager at Tesla, about what</p> <p>17 steps needed to be taken to protect Mr. Diaz from further</p> <p>18 harassment or retaliation?</p> <p>19 A. Not that I can recall.</p> <p>20 Q. What about Ed Romero, did you ever have any</p> <p>21 discussion with Ed Romero about what steps needed to be</p> <p>22 taken to protect Owen Diaz from further harassment or</p> <p>23 retaliation?</p> <p>24 A. Not that I can recall.</p> <p>25 Q. Jose Torres, did you have any communications</p> <p>78:01 with Jose Torres about protecting Mr. Diaz?</p> <p>02 A. Not that I can recall.</p> <p>03 Q. Aaron Marconey, did you have any questions with</p> <p>04 Aaron Marconey about what to do to protect Mr. Diaz</p> <p>05 against further harassment or discrimination?</p> <p>06 A. No, I did not.</p> <p>07 Q. Did anyone from Tesla reach out to you to talk</p> <p>08 about what steps needed to be taken to protect Mr. Diaz</p> <p>09 against further harassment or retaliation?</p> <p>10 A. No, I did not speak to anyone from Tesla.</p> <p>11 Q. Did anyone from nextSource reach out to you</p> <p>12 about what steps could be taken to protect Mr. Diaz</p> <p>13 against further harassment or retaliation?</p> <p>14 A. No. I did not speak to anyone there.</p> <p>15 Q. And what about from Citistaff, did anyone from</p> <p>16 Citistaff reach out to you about what steps could be</p> <p>17 taken to protect Mr. Diaz against further harassment or</p> <p>18 discrimination?</p> <p>19 A. No, they did not.</p>	
41	79:01-79:04	<p>79:01 Q. Did Chartwell, after it received this complaint</p> <p>02 about Mr. Martinez, did Chartwell go into the factory in</p> <p>03 any way to monitor what was going on?</p> <p>04 A. Not that I can recall.</p>	
42	79:13-79:16	<p>79:13 Q. Do you know whether or not Mr. Martinez was</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>14 actually scheduled to work during that time that he was</p> <p>15 on a three-day suspension for the investigation?</p> <p>16 A. No, I do not.</p>	
43	80:10-82:14	<p>8 0:10 If you look at the statements, the statement</p> <p>11 that you have with Mr. Diaz was dated January 25 of 2016;</p> <p>12 correct?</p> <p>13 A. Uh-huh. Yes, that's correct.</p> <p>14 Q. And the statement that Mr. Martinez gave was</p> <p>15 actually dated January 22 of 2015; correct?</p> <p>16 A. It appears so, yes.</p> <p>17 Q. So it looks like you received Mr. Martinez'</p> <p>18 statement prior to receiving or interviewing Mr. Diaz;</p> <p>19 correct?</p> <p>20 A. It seems so.</p> <p>21 Q. And there is no references in your notes with</p> <p>22 Mr. Diaz about things that Mr. Martinez said, is there?</p> <p>23 A. No.</p> <p>24 Q. So it doesn't appear as if you asked Mr. Diaz</p> <p>25 any questions about what Mr. Martinez had said; right?</p> <p>26 81:01 A. Correct.</p> <p>27 Q. Now, your typical practice would be first to</p> <p>28 interview the complainant; right?</p> <p>04 A. Correct.</p> <p>05 Q. So it's fair to say that at least in terms of</p> <p>06 this investigation that you did regarding Mr. Diaz'</p> <p>07 complaint, your investigation didn't follow that typical</p> <p>08 practice, in that way; right?</p> <p>09 A. Correct. Yes.</p> <p>10 There may have been a reason for that. And I</p> <p>11 can only think that it's because Mr. Diaz was not -</p> <p>12 - was</p> <p>13 not an employee, at the time, of Chartwell Staffing</p> <p>14 Solutions. And so I was trying to get ahold of someone</p> <p>15 at his agency before speaking to the employee.</p> <p>16 Q. Well, you also didn't interview Mr. Martinez in</p> <p>17 person or over the phone. That was something that</p> <p>18 deviated from your typical investigation practice;</p> <p>19 correct?</p> <p>20 A. Correct. This definitely was probably</p>	Cumulative, waste of time and unduly prejudicial. Fed. R. Evid. 403.

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>20 something that was taken down by the staffing branch.</p> <p>21 Q. And you have no explanation why Mr. Martinez</p> <p>22 was allowed to write his own statement as opposed to</p> <p>23 having someone interview him with those questions; right?</p> <p>24 A. Correct.</p> <p>25 Q. Do you recall any other conversations you had</p> <p>82:01 with anybody at Tesla relative to Mr. Diaz' complaint</p> <p>02 other than what you've already testified to?</p> <p>03 A. Not that I can recall.</p> <p>04 Q. Other than the one conversation you had with</p> <p>05 Mr. Diaz where you asked him the questions in the notes</p> <p>06 in NS 42, did you have any other conversations with</p> <p>07 Mr. Diaz?</p> <p>08 A. Not that I can recall.</p> <p>09 Q. And how long did the interview last that you</p> <p>10 had with Mr. Diaz?</p> <p>11 A. I do not remember.</p> <p>12 Q. Do you recall anything else about your</p> <p>13 investigation that you haven't testified to?</p> <p>14 A. No, sir.</p>	

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#	Lines	Deposition Excerpt	Objection / Counterdesignation
1	7:21-8:12	<p>7:21 MR. ORGAN: Q. Could you please state and</p> <p>22 spell your full name for the record.</p> <p>23 A. Kevin McGinn; K-E-V-I-N, M-C-G-I-N-N.</p> <p>24 Q. Mr. McGinn, do you have any middle names?</p> <p>25 A. Francis, F-R-A-N-C-I-S.</p> <p>8:01 Q. How old are you?</p> <p>02 A. 50.</p> <p>03 Q. And did you go to college?</p> <p>04 A. Yes.</p> <p>05 Q. Where did you go to college?</p> <p>06 A. Middle Tennessee State University.</p> <p>07 Q. And when did you graduate?</p> <p>08 A. 1992.</p> <p>09 Q. And what was your degree?</p> <p>10 A. Master's in business administration. Well,</p> <p>11 that was the undergrad, in business administration. I</p> <p>12 also have a graduate degree as well.</p>	
2	8:23-9:22	<p>8:23 Q. And what was your MBA; where was that from?</p> <p>24 A. Wilkes University.</p> <p>25 Q. Wilkes?</p> <p>9:01 A. Wilkes, W-I-L-K-E-S, Pennsylvania.</p> <p>02 Q. And you received an MBA from there?</p> <p>03 A. Yes, MBA in finance.</p> <p>04 Q. What year was that?</p> <p>05 A. 1994.</p> <p>06 Q. When did you -- well, what's your current</p> <p>07 position for nextSource, Inc.?</p> <p>08 A. I'm the chief financial officer for</p> <p>09 nextSource, Inc.</p> <p>10 Q. And where are you located? Where is your</p> <p>11 office?</p> <p>12 A. Based in Nashville, Tennessee.</p> <p>13 Q. How long have you worked for nextSource?</p> <p>14 A. Just under four years.</p> <p>15 Q. So when did you start working at nextSource?</p> <p>16 A. October of 2015.</p> <p>17 Q. And what was your starting position with</p> <p>18 nextSource, Inc.?</p> <p>19 A. I joined nextSource as the CFO.</p> <p>20 Q. So you've been the CFO since you joined</p> <p>21 nextSource in October of 2015; is that right?</p> <p>22 A. Yes.</p>	
3	10:02-10:09	<p>10:02 MR. ORGAN: Q. Tell me, what are your job</p> <p>03 duties as the CFO for nextSource, Inc.?</p> <p>04 A. I'm responsible for all the accounting</p> <p>05 control of the company, the financial reporting of the</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>06 company. The payroll processing for the company</p> <p>07 reports to me. Human resources reports to me.</p> <p>08 Q. How many direct reports do you have?</p> <p>09 A. Approximately five direct reports.</p>	
4	12:15- 13:04	<p>12:15 Q. I'm asking you what nextSource considers.</p> <p>16 And so what I'm trying to find out is, does nextSource</p> <p>17 consider administrative employees to be employees of</p> <p>18 nextSource?</p> <p>19 A. No. The administrative -- the associates, as</p> <p>20 I define the associates who are -- in which we provide</p> <p>21 the administrative payroll, their pay rates are set by</p> <p>22 the clients. They act under the direction and control</p> <p>23 of the clients. So I would not -- nextSource would</p> <p>24 not consider them employees in that -- under that</p> <p>25 definition.</p> <p>13:01 Q. Okay. So nextSource considers the associates</p> <p>02 to be under the direction and control of the clients</p> <p>03 who you contract with; is that right?</p> <p>04 A. That's correct.</p>	<p>Counterdesignation: 13:05-13:09. Rule of completeness. Fed. R. Evid. 106, Fed. R. Civ. P. 32(a)(6).</p> <p>5 Q. Okay. And</p> <p>nextSource's role,</p> <p>relative to the</p> <p>6 associates, is to</p> <p>essentially pay them their</p> <p>salary or</p> <p>7 hourly rates and then</p> <p>any benefits that they're</p> <p>8 entitled to; is that</p> <p>correct?</p> <p>9 A. Correct.</p>
5	13:10- 13:19	<p>13:10 Q. Is there any other role that nextSource</p> <p>11 plays, relative to the associates, in terms of their</p> <p>12 employee, or their employment with a client?</p> <p>13 A. So the associate works at the direction of</p> <p>14 the client, usually on the client site. NextSource</p> <p>15 will, if needed, take direction from the client to</p> <p>16 discipline an employee, if the client has requested us</p> <p>17 to. If the client has -- has wished for the person to</p> <p>18 be removed from the site, we could facilitate that</p> <p>19 removal. That's essentially, generally, it.</p>	
6	16:10- 16:20	<p>16:10 Q. So looking at Exhibit 166, you've been</p> <p>11 designated as the person most knowledgeable on Topic</p> <p>12 1, the contractual relationship between Defendant and</p> <p>13 Tesla, Inc.; is that true, subject to your objections?</p> <p>14 A. Yes.</p> <p>15 Q. And you've also been designated as the person</p> <p>16 most knowledgeable on the second topic, the</p> <p>17 contractual relationship between Defendant</p>	<p>Testimony was only provided subject to the objections to the deposition notice, and testimony does not reflect any of the objections as stated at the deposition: "Counsel, these questions are all subject to the objections that we served on your office last week. And so we would produce -- we are</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		and 18 CitiStaff Solutions, Inc., subject to your objections; 19 is that correct? 20 A. Yes.	producing Mr. McGinn as the 30(b)(6) witness subject to all of those objections. And if you have a copy of the objections, it might be useful for you to share those with the witness as you're going down the list." Dep. 14:16- 22. Thus, it is unduly prejudicial and misleading. Fed. R. Evid. 403.
7	17:15- 17:17	17:15 Q. Was there some kind of written contract 16 between Tesla and nextSource? 17 A. Yes.	
8	18:01- 18:04	18:01 MR. ORGAN: Q. And did nextSource provide 02 any associates, or what you referred to as 03 administrative employees, to Tesla? 04 A. Yes.	
9	18:23- 22:20	18:23 Q. And the contract that nextSource had with 24 Tesla included at least a provision that allowed for 25 nextSource to provide those 30 to 40 associates to 19:01 Tesla; is that right? 02 A. Yes. 03 Q. In addition to providing associates to work 04 at the Tesla factory -- strike that. 05 Were all of these associates working at the 06 Tesla factory in Fremont, California? 07 A. Yes. 08 Q. In addition to providing for the 30 to 40 09 associates who, on average, worked at the Fremont 10 factory, did the contract that nextSource had with 11 Tesla provide for any other services? 12 A. Yes. 13 Q. And what were the other services? 14 A. So nextSource provides what is known as MSP 15 services to our clients. 16 Q. And what does "MSP services" mean? 17 A. An MSP is a managed service provider. 18 Q. And what does a managed service provider 19 entail or encompass? 20 A. Right. So in connection with that service, 21 nextSource will provide the technology platform under 22 which supplier workers -- supplier-employed workers -- 23 would enter, submit timesheets, and the client would 24 approve those timesheets. So it was an interface 25 between the supplier workers and the client.	<u>Counterdesignation:</u> 22:21-24. Rule of completeness. Fed. R. Evid. 106, Fed. R. Civ. P. 32(a). 21 Q. In addition to that, did nextSource provide 22 any additional services for CitiStaff employees, other 23 than the timekeeping function? 24 A. No.

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>That's 20:01 one category of a managed service provider. 02 The second category would be the selection of 03 suppliers. So supplier selection would be a service 04 that nextSource provides under its agreement. 05 Q. And what does that mean, selection of 06 suppliers? What does that involve? 07 A. So a client such as Tesla may have needs in a 08 certain geography or a certain, say, skill set. 09 NextSource associates provide only a part of those 10 needs; right? So nextSource would select suppliers 11 who would provide additional supplier-employed workers 12 at the Tesla site. 13 Q. So in other words, nextSource would 14 coordinate with other staffing agencies to try and 15 accommodate Tesla's demand for associates at the 16 Fremont factory? 17 MR. GELLER: Misstates his testimony. 18 Go ahead. 19 THE WITNESS: NextSource would select 20 suppliers who would provide resources into the Tesla 21 factory at the direction of -- day-to-day direction of 22 Tesla. However, those workers were employed; in other 23 words, they were recruited, onboarded and paid, and, 24 if needed, you know, terminated by the supplier 25 employer. 21:01 MR. ORGAN: Q. And when you're referring to 02 "suppliers" here, you're referring to companies that 03 would supply manpower; is that correct? 04 A. Yes. 05 Q. I don't mean to be sexist. Manpower, women 06 power, whatever power. People power. 07 A. Yes. 08 Q. And how did nextSource go about determining 09 which suppliers would be eligible to provide workers 10 at the Tesla factory in Fremont? 11 A. So Tesla would have to approve any suppliers 12 that were -- would be utilized at their site, so the 13 approval of any supplier sits with Tesla. The -- 14 nextSource might recommend, you know,</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28		<p>suppliers that 15 can support the program at Tesla. So it really comes 16 down to supplier, selection, and recommendations, 17 would be a service that nextSource provided. 18 Q. In addition to -- so you mentioned two things 19 that nextSource would do for Tesla. One would be to 20 provide head count, actual head count of associates to 21 the Tesla factory; correct? 22 A. Yes. 23 Q. And then the second thing would be as a 24 managed service provider; is that correct? 25 A. Yes. 22:01 Q. And then under managed service providers, in 02 terms of the functions that nextSource provided, those 03 sort of fall into two categories. 04 You would provide a platform, a technology 05 platform for associates to essentially submit 06 timesheets; is that correct? 07 MR. GELLER: Misstates his testimony.</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>08 THE WITNESS: The platform would be for the</p> <p>09 supplier-employed workers to submit -- enter and</p> <p>10 submit their timesheets, which would then be approved</p> <p>11 by the -- well, to be approved by the client.</p> <p>12 MR. ORGAN: Okay.</p> <p>13 Q. So for example, nextSource chose CitiStaff</p> <p>14 Solutions, Inc., as a provider; is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. And then nextSource would establish the</p> <p>17 technology platform for CitiStaff associates to, like,</p> <p>18 submit their timesheets and things like that; is that</p> <p>19 correct?</p> <p>20 A. Yes.</p>	
10	23:17-23:25	<p>23:17 Q. What else did nextSource do under its 18 contract with Tesla?</p> <p>19 A. The third and I'll say the final primary 20 service that nextSource provide would be an on-site</p> <p>21 program team, which would be nextSource professionals.</p> <p>22 So these would be employees employed by nextSource</p> <p>23 that act as a facilitator -- well, I'll stop. That's</p> <p>24 basically the third service that we provided, on-site</p> <p>25 program team.</p>	<p><u>Counterdesignation:</u> 24:1-25:9. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>1 Q. And so tell me, what were the functions that</p> <p>2 the on-site program team would do that nextSource</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			3 provided?
2			4 A. The key functions of
3			a program team is to
4			5 take the client's
5			direction and bring -- and
6			really
7			6 facilitate those needs
8			to the supplier workforce.
9			So
10			7 one would be, you know -
11			- well that's it. It
12			8 basically would -- any
13			kind of client needs or
14			wishes
15			9 would be messaged to the
16			suppliers for the
17			suppliers
18			10 to take whatever action
19			they would deem necessary
20			for
21			11 the workforce. That's
22			one area.
23			12 The second service that
24			a program team would
25			13 perform would be
26			managing the requisitions
27			in the
28			14 platform to meet the

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			head count level set by
2			the
3			15 client. So, expand just
4			a little bit there: The
5			16 client needs additional
6			head count for a shift
7			next
8			17 week. NextSource
9			program team will set up
10			the
11			18 requisition in the
12			software. The suppliers
13			will then
14			19 go out, find, recruit,
15			onboard and hire those
16			workers
17			20 to be placed onto the
18			requisition in the system.
19			21 So I would say it's an
20			information flow.
21			22 Information flows
22			through nextSource, data
23			flow, that
24			23 sort of thing.
25			24 Q. So you mentioned
26			essentially two additional
27			25 things that, under this third category,
28			that
			1 nextSource would do. One

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>would be to essentially take</p> <p>2 a client's direction and then translate or communicate</p> <p>3 those needs to the supplier workforce; is that right?</p> <p>4 A. That's correct.</p> <p>5 Q. And then the other thing would be that</p> <p>6 nextSource would manage requisitions to ensure that</p> <p>7 the head count that Tesla needed was met by working</p> <p>8 with the suppliers to fill those requisitions?</p> <p>9 A. Yes.</p>
11	25:10-25:24	<p>25:10 Q. So who were the -- other than CitiStaff</p> <p>11 Solutions, who were the other suppliers that</p> <p>12 nextSource worked with when you first</p> <p>13 onboarded in</p> <p>14 October of 2015, relative to the Tesla Fremont</p> <p>15 factory?</p> <p>16 A. CitiStaff is one supplier. Chartwell was the</p> <p>17 other, primary supplier. I believe there was a third</p> <p>18 supplier not relevant here, but I'm happy to share</p> <p>19 the</p> <p>20 name. Maliko, I believe, was another supplier</p> <p>21 employer at the Tesla site.</p> <p>22 Q. In terms of providing sort of</p> <p>23 production-associate level employees, were the</p> <p>24 primary</p> <p>25 suppliers that nextSource coordinate with</p> <p>26 CitiStaff</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		23 and Chartwell? 24 A. Yes.	
12	27:07- 27:11	27:07 Q. So your best estimate is that the number of 08 people who were on boarded at the Tesla factory in at 09 least the 2015 time period, through CitiStaff and 10 Chartwell, was approximately 2- to 300; is that right? 11 A. That is my speculation, but yes.	Irrelevant. Not based on personal knowledge because deponent testified the answer any testimony on this point “I would be speculating” (26:23-27:5) and his job as to data does not involve “track[ing] the day-to- day or week-to-week supplier head counts to – again, enough to speculate” (27:15-19). Fed. R. Evid. 602.
13	27:20- 27:25	27:20 Q. Okay. In terms of the contract that 21 nextSource had with Tesla, do you have any knowledge 22 of the particulars of the contract, other than what 23 you've already testified to? Meaning, have you seen 24 the contract or read it, or anything like that? 25 A. I have seen the contract.	Counterdesignation: 28:1-3. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a). 1 Q. Did you sign the contract on behalf of 2 nextSource? 3 A. No.
14	31:25- 32:08	31:25 Any nextSource administrative employee or 32:01 associate would be subject to the direction and 02 control of Tesla, if they were working at the Tesla 03 factory? 04 A. Yes. 05 Q. So Tesla was responsible in terms of the 06 day-to-day aspects of any nextSource administrative 07 employee or associate; is that true? 08 A. Yes.	Not based on personal knowledge because deponent testified (32:16-25) that he would be speculating about which policies were applicable at the Tesla site “I really couldn’t tell you which policies were overriding at the Tesla site, versus employment policies that the supplier employer would have determined” and the contract did not address the types of policies that

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			applied to workers at the
2			Tesla factory (33:5-10). The
3			deponent was only produced as
4			to policies relating to
5			nextSource's own employees,
6			not contract workers (41:5-
7			24). Fed. R. Evid. 602.
8			
9			<u>Counterdesignation:</u> 35:6-10,
10			35:12-17.
11			
12			6 "QUESTION: And then your
13			understanding is
14			7 that the employment
15			policies that applied to
16			8 administrative employees
17			of nextSource working at
18			the
19			9 Tesla factory, were the
20			employment policies of
21			10 nextSource; is that
22			right?")
23			12 THE WITNESS: The
24			associates of nextSource
25			13 who worked at the Tesla
26			site worked under the
27			14 direction and control
28			of Tesla.

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>15 The employment policies for those associates 16 would be -- would fall under -- basically, it would 17 fall under nextSource.</p>
15	36:07- 37:09	<p>36:07 Did nextSource have a specific contract with 08 CitiStaff to provide workers at the Tesla factory, or 09 does it have sort of a broader contract that covers 10 all of its relationships with CitiStaff? 11 A. It would be an agreement to provide workers 12 in to Tesla. 13 Q. Okay. So with respect to CitiStaff providing 14 workers at the Tesla factory as one of nextSource's 15 suppliers, that would be pursuant to a specific 16 contract between nextSource and CitiStaff; is that 17 right? 18 A. Yes. 19 Q. And would Tesla have been a party to that 20 contract also? 21 A. No. 22 Q. So the contract that nextSource has with 23 Tesla includes a component or provisions that allows 24 nextSource to contract with other suppliers; is that 25 right? 26 37:01 MR. GELLER: Vague and ambiguous. 02 THE WITNESS: You said the contract between 03 nextSource and Tesla? 04 MR. ORGAN: Q. Yes. 05 A. Allows to use -- 06 Q. NextSource to provide or to contract with 07 other suppliers, in terms of providing services to 08 Tesla. 09 A. Yes.</p>	
16	37:20- 38:17	<p>37:20 Q. So in terms of the contract, though, that 21 nextSource has with CitiStaff relative to providing 22 services to or employees to the Tesla factory, that 23 contract was specific to providing employees to</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>Tesla; 24 right? 25 MR. GELLER: Asked and answered. 38:01 THE WITNESS: Yes. 02 MR. ORGAN: Q. And in terms of -- do you 03 remember, in terms of the specifics of that 04 contract -- actually, I just want the general 05 parameters. I don't want the specifics. 06 In terms of the general parameters of what 07 the contract between CitiStaff and nextSource were, 08 relative to providing employees to work at the Tesla 09 factory, what were sort of the general parameters of 10 that contract? 11 A. Speaking very generally here, that there 12 would be the supplier. In your question, CitiStaff, 13 would provide the workers. They would -- the supplier 14 would indemnify nextSource for the actions of those 15 workers and so on. There would be an agreed- upon bill 16 rate that the supplier would charge, those sort of 17 things.</p>	
17	42:05- 42:14	<p>42:05 Some of the professionals that nextSource 06 employed worked at the Tesla factory; correct? 07 A. Yes. 08 Q. Do you know who those people were? 09 A. I believe it was Mr. Wayne Jackson. There 10 was Vanessa parks, and there's a third lady who 11 actually left before -- right at the time I got there. 12 I don't remember her name. It was a third female that 13 worked -- a professional who worked in that Tesla 14 site.</p>	<p><u>Counterdesignation:</u> 42:15- 42:18. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p>
18	42:19- 43:07	<p>42:19 Q. So what was -- Wayne Jackson we've deposed. 20 I know him. He was your account manager; right? 21 A. I believe his title was program manager, but 22 essentially. 23 Q. And what's a program manager function? 24 A. So the program manager acts as a liaison 25 between Tesla, the client, Tesla's wishes, and the 43:01 suppliers -- you know the supplier workers, the 02 supplier-employed workers. That's one of the primary 03 duties of a program manager. He may also gather facts 04 at the direction of Tesla or at the request of Tesla.</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>05 He was a fact gatherer and will communicate to the --</p> <p>06 either party to the client side or to the supplier</p> <p>07 side, based on the facts.</p>	
19	43:19-44:01	<p>43:19 Q. So Wayne Jackson, was he the highest-level</p> <p>20 nextSource employee actually working at the Tesla</p> <p>21 factory?</p> <p>22 A. Yes.</p> <p>23 Q. And then Vanessa Parks worked in an</p> <p>24 administrative role at the Tesla factory too; is that</p> <p>5 right?</p> <p>44:01 A. Yes.</p>	<p>Counterdesignation: 43:8-43:15. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>8 Q. Okay. And then you</p> <p>mentioned a Vanessa</p> <p>9 Parks. What was Vanessa</p> <p>Parks' job?</p> <p>10 A. Vanessa was an</p> <p>administrative role there;</p> <p>11 again, a professional</p> <p>of nextSource but worked</p> <p>in a --</p> <p>12 in this example, I'm</p> <p>using "administrative" to</p> <p>mean</p> <p>13 she would enter</p> <p>requisitions into the</p> <p>system. She</p> <p>14 would, you know --</p> <p>data-keying, that sort of</p> <p>thing,</p> <p>15 very administrative type of work.</p>
20	56:14-56:21	<p>56:14 No. Before we go into that, in terms of</p> <p>15 nextSource's contractual relationship with CitiStaff,</p> <p>16 is that similar to -- is that similar to the</p> <p>17 contractual relationship that nextSource has</p> <p>with any</p> <p>18 other contractors at the Tesla factory, like</p> <p>19 Chartwell?</p> <p>20 MR. GELLER: Vague and ambiguous.</p> <p>21 THE WITNESS: Generally, yes.</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
21	63:15- 64:23	<p>63:15 Q. And then -- so with respect to the 16 administrative employees, how does nextSource go about 17 ensuring that they have a workplace that is free from 18 all forms of unlawful harassment and discrimination? 19 MR. GELLER: Objection to the form. 20 Go ahead. 21 THE WITNESS: Right. So as stated earlier, 22 an administrative employee is one that nextSource will 23 pay. It's one that will fall under certain benefits. 24 The -- as it pertains to harassment and discrimination 25 policies, or employment policies, they will fall under 64:01 the client's -- the client's prevailing policies 02 around those sort of things. So they operate at the 03 direction and control of the client, at a pay rate set 04 by the client, under policies that are in place at the 05 client site. 06 MR. ORGAN: Q. So for example, any 07 administrative employee who is working through 08 nextSource at the Tesla factory, when you were 09 still -- when you still had employees there, those 10 employees would have been subject to Tesla's policies 11 and procedures relative to harassment and 12 discrimination, those topics; is that true? 13 A. Yes. 14 Q. And you would have expected that Tesla would 15 be enforcing their policies or procedures relative to 16 harassment or discrimination relative to any contract 17 employee who was working -- administrative employee 18 who was working at the Tesla factory; right? 19 A. Yes. An associate, otherwise known as an 20 administrative employee, as we're defining it, working 21 at the Tesla site, the client, would fall under the 22 client's policies for a number of things, including 23 presumably harassment and discrimination.</p>	<p>Testimony not based on personal knowledge because deponent testified (32:16-25) that he would be speculating about which policies were applicable at the Tesla site "I really couldn't tell you which policies were overriding at the Tesla site, versus employment policies that the supplier employer would have determined" and the contract did not address the types of policies that applied to workers at the Tesla factory (33:5-10). The deponent was only produced as to policies relating to nextSource's own employees, not contract workers (41:5-24). Fed. R. Evid. 602.</p>
22	65:22- 65:25	<p>65:22 Q. Let me ask you this: Who is -- you're the 23 head of human resources; is that right, as the CFO? 24 A. Human resources reports in to me at 25 nextSource, for nextSource professionals.</p>	
23	70:17- 71:01	<p>70:17 It says, "The company does not tolerate such 18 harassment or discrimination by managers, directors,</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>19 or coworkers. The company will also attempt to</p> <p>20 prevent such harassment of employees by</p> <p>21 non-employees."</p> <p>22 That's the company's policy relative to</p> <p>23 harassment and discrimination, at least part of</p> <p>24 it;</p> <p>25 correct? Go to the paragraph above it. There we go.</p> <p>26 Yeah.</p> <p>27 71:01 A. Yes.</p>	
24	90:02-90:14	<p>90:02 MR. ORGAN: Q. So another way to say it is</p> <p>03 that nextSource has a zero tolerance policy for any</p> <p>04 kind of harassment based on race, sex, or other</p> <p>05 prohibited characteristics; is that fair?</p> <p>06 A. I would go -- I would define it by zero</p> <p>07 tolerance policy for harassment by its professional</p> <p>08 employees, which includes managers, directors, and</p> <p>09 coworkers. Zero tolerance policy pertaining to</p> <p>10 nextSource professional employees.</p> <p>11 Q. And nextSource's zero tolerance policies</p> <p>12 relative to race harassment then would apply to any of</p> <p>13 the professional employees at nextSource; right?</p> <p>14 A. Yes.</p>	
25	95:06-95:19	<p>95:06 Q. The complaint that you became aware of, of</p> <p>07 race harassment, shortly after you started working at</p> <p>08 nextSource, did it have to do with a complaint of race</p> <p>09 harassment at the Tesla work site?</p> <p>10 A. So I want to make sure I understand the</p> <p>11 question very clearly.</p> <p>12 When you say "you," when I started at the</p> <p>13 company in October of '15, speaking for the company,</p> <p>14 right, I'm here speaking as the company. The</p> <p>15 company -- yes.</p> <p>16 Q. And was the complaint of race harassment at</p> <p>17 the Tesla site a complaint by Owen Diaz, that you were</p> <p>18 aware of?</p> <p>19 A. Yes.</p>	<p>Counterdesignation: 95:20-25.</p> <p>Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>20 Q. And just so we're</p> <p>clear, other than the</p> <p>21 complaint by Owen Diaz</p> <p>of race harassment at the</p> <p>Tesla</p> <p>22 work site, are you</p> <p>aware of any other</p> <p>complaints by</p> <p>23 anyone else at the</p> <p>Tesla work site relating</p> <p>to race</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			24 harassment?
			25 A. No.
26	96:12-97:19	<p>96:12 Well, why don't we do the preliminary here</p> <p>13 first. What was Owen Diaz's relationship to</p> <p>14 nextSource at the time that he made a</p> <p>complaint of</p> <p>15 harassment, race harassment, at the Tesla site?</p> <p>16 A. So Owen Diaz was a supplier employee of</p> <p>17 CitiStaff.</p> <p>18 Q. And so what was Owen Diaz's relationship</p> <p>then</p> <p>19 to nextSource at that point, at the point of him</p> <p>20 making this complaint of race harassment</p> <p>sometime</p> <p>21 in -- was it in 2015 or 2016 that he made the</p> <p>22 complaint that you became -- that nextSource</p> <p>became</p> <p>23 aware of?</p> <p>24 A. The racial incident, maybe I'm getting my --</p> <p>25 kind of rough months here, it was late '15, early</p> <p>'16,</p> <p>97:01 kind of broad -- we were made aware -- "we,"</p> <p>the</p> <p>02 company -- made aware of a racial incident.</p> <p>03 Q. Okay. How did nextSource become aware</p> <p>of</p> <p>04 that racial incident? Relative to Mr. Diaz.</p> <p>05 A. I believe that Mr. Diaz communicated to</p> <p>06 Mr. Jackson, a nextSource professional employee,</p> <p>about</p> <p>07 the racial incident.</p> <p>08 Q. And if I have it correct then, Mr. Diaz</p> <p>09 was -- at the time that he complained to Wayne</p> <p>Jackson</p> <p>10 about the racial harassment that he was</p> <p>claiming was</p> <p>11 directed at him, that was when CitiStaff was a</p> <p>12 supplier for nextSource to Tesla; is that</p> <p>correct?</p> <p>13 A. Correct.</p> <p>14 Q. So in other words, Mr. Diaz's relationship,</p> <p>15 as I understand it then, is that of -- he -- Mr.</p> <p>Diaz</p> <p>16 was working for a contractor supplier of</p> <p>nextSource,</p> <p>17 pursuant to nextSource's contract with Tesla;</p> <p>is that</p> <p>18 right?</p> <p>19 A. Yes.</p>	
27	98:04-98:18	<p>98:04 MR. ORGAN: Q. And then my understanding</p> <p>is,</p> <p>05 after Mr. Diaz communicated to Wayne Jackson</p> <p>that he</p> <p>06 was being subjected -- that Mr. Diaz was being</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>07 subjected to what he considered to be race harassment,</p> <p>08 then Mr. Jackson did some follow-up; is that correct?</p> <p>09 A. Yeah, Mr. Jackson would then gather the facts</p> <p>10 around -- you know, take statements, basically.</p> <p>11 He</p> <p>12 might take statements of the parties and, you know,</p> <p>13 try and gather the facts in preparation to bring those</p> <p>14 facts to the client and to the supplier.</p> <p>15 So the client has responsibility for the</p> <p>16 day-to-day. They are an interested party in this.</p> <p>17 The supplier as the employer -- by the way, the</p> <p>18 supplier -- yeah, so the supplier would be notified as</p> <p>19 well.</p>	
28	99:06-99:18	<p>99:06 Q. But in terms of your suppliers, the companies</p> <p>07 like CitiStaff and Chartwell, they're essentially just</p> <p>08 providing employees to Tesla to work in Tesla's</p> <p>09 factory; is that correct?</p> <p>10 MR. GELLER: Misstates his testimony.</p> <p>11 Objection to the form.</p> <p>12 MS. SWAFFORD-HARRIS: And calls for</p> <p>13 speculation.</p> <p>14 THE WITNESS: The supplier will, in the</p> <p>15 course of their employment of the worker, will</p> <p>16 recruit, onboard, and pay the worker. They place that</p> <p>17 worker at the Tesla site, who then works under the</p> <p>18 day-to-day direction and control of Tesla.</p>	<p>Testimony is cumulative, wastes time and would cause undue delay. The same testimony was provided by designations 4, 9, 10, 14, 21, 30, 34 and 40. Fed. R. Evid. 403.</p>
29	101:10-101:15	<p>101:10 Q. CitiStaff was one of the suppliers that</p> <p>11 nextSource had at the Tesla factory; right?</p> <p>12 A. Yes.</p> <p>13 Q. And Chartwell was another supplier that</p> <p>14 nextSource had at the Tesla factory?</p> <p>15 A. Yes.</p>	<p>Counterdesignation: 100:20-101:3. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>20 Q. And Chartwell and CitiStaff were suppliers of</p> <p>21 workers to Tesla via nextSource; correct?</p> <p>Meaning,</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>22 nextSource had a role in making CitiStaff and 23 Chartwell suppliers to Tesla; right?</p> <p>24 A. NextSource's role was in the supplier 25 selection, meaning in the selection of the companies 1 that provide the resource. NextSource does not have a 2 role in the selection of the employees that may work 3 at the Tesla site.</p>
30	101:21- 102:16	<p>101:21 Q. Okay. And each of those agencies, at least 22 as to CitiStaff and Chartwell, they would do the 23 recruiting of employees, not nextSource; correct?</p> <p>24 A. Yes.</p> <p>25 Q. And CitiStaff and Chartwell would also take 102:01 care of the onboarding of those employees to work at 02 the Tesla factory; correct?</p> <p>03 A. Yes.</p> <p>04 Q. And then CitiStaff and Chartwell would also 05 take care of the pay for the employees who were being 06 recruited to work at the Tesla factory, through them; 07 right?</p> <p>08 A. Yes.</p> <p>09 Q. In terms of your understanding, in terms of 10 the direction and the control of the employees once 11 they were supplied by CitiStaff and Chartwell, your 12 understanding was that Tesla was in charge of the</p>	<p>102:9-102:16. Testimony is cumulative, wastes time and would cause undue delay. The same testimony was provided by designations 4, 5, 9, 10, 14, 21, 28, 34 and 40. Fed. R. Evid. 403.</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>13 direction and control of the employees once they</p> <p>14 actually got to the factory; is that correct?</p> <p>15 A. That is correct, yes. That's my</p> <p>16 understanding.</p>	
31	104:18-105:10	<p>104:18 Q. And who was the program team for nextSource</p> <p>19 working at Tesla in late 2015, early 2016?</p> <p>20 A. Mr. Wayne Jackson.</p> <p>21 Q. What was the protocol for Mr. Jackson to</p> <p>22 follow, in terms of keeping nextSource informed about</p> <p>23 his investigation of Mr. Diaz's complaint?</p> <p>24 A. So as Mr. Jackson would be gathering</p> <p>25 statements -- again, fact gathering -- he might confer</p> <p>105:01 with his supervisor, which would be logical. He'd</p> <p>02 want to bounce ideas off his supervisor and share the</p> <p>03 facts.</p> <p>04 Q. Who was Mr. Jackson's supervisor in late</p> <p>05 2015, early 2016?</p> <p>06 A. That would have been Terry Garrett. I</p> <p>07 believe her title is director, division director,</p> <p>08 something.</p> <p>09 Q. Director of operations?</p> <p>10 A. Yes.</p>	
32	106:24-108:08	<p>106:24 Q. So we were talking about the process that</p> <p>25 Wayne Jackson was supposed to go through.</p> <p>107:01 One thing that Mr. Jackson was supposed to do</p> <p>02 was to act as a liaison between Tesla and CitiStaff;</p> <p>03 is that correct?</p> <p>04 A. Correct.</p> <p>05 Q. And another thing that Mr. Jackson was</p> <p>06 supposed to do was to gather information relative to</p> <p>07 Mr. Diaz's complaint; correct?</p> <p>08 A. When Mr. Jackson was made aware of the</p> <p>09 complaint, he gathered facts.</p> <p>10 Q. Okay. And then another thing Mr. Jackson was</p> <p>11 supposed to do was to confer with his boss, Terry</p> <p>12 Garrett, about what steps to take for -- relative to</p> <p>13 nextSource; correct?</p> <p>14 A. I would push back a little bit on what to do</p> <p>15 next for nextSource. This was not deemed to be a</p> <p>16 nextSource issue, so what Wayne was doing was -</p> <p>- my</p> <p>17 understanding was gathering the facts, taking</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>18 statements, and then his disposition would be to bring</p> <p>19 that to Tesla on the client side and then the supplier</p> <p>20 for which the offending person would have worked.</p> <p>21 Q. In terms of how Mr. Jackson was supposed to</p> <p>22 bring the issues relating to Owen Diaz's complaint and</p> <p>23 his investigation to Tesla, was there a particular</p> <p>24 person that he was supposed to bring that information</p> <p>25 to at Tesla?</p> <p>108:01 A. Yes, so concurrent with Mr. Diaz advising</p> <p>02 Mr. Jackson, Wayne Jackson about the claim, the</p> <p>--</p> <p>03 remember I mentioned earlier, there was a series of</p> <p>04 department managers. Well, the affected department</p> <p>05 manager, I believe the name is Victor Quintero,</p> <p>06 brought -- advised Wayne of the claim, complaint, and</p> <p>07 Wayne was fact gathering and would have brought the</p> <p>08 information back to Victor Quintero.</p>	
33	109:12-110:08	<p>109:12 Did nextSource get a copy of Mr. Diaz's</p> <p>13 complaint with the pictures that were attached, the</p> <p>14 email?</p> <p>15 A. NextSource -- I believe yes.</p> <p>16 Q. And was it that complaint email plus the</p> <p>17 pictures that started things going in nextSource, in</p> <p>18 terms of gathering facts relative to Mr. Diaz's</p> <p>19 complaint of racial harassment?</p> <p>20 A. Yes, it was the statement, that and</p> <p>21 Mr. Jackson brought that information to the parties,</p> <p>22 Tesla and the employer of the offending person.</p> <p>23 Q. Chartwell; right?</p> <p>24 A. I believe Chartwell was the supplier employer</p> <p>25 of the claimed offender.</p> <p>110:01 Q. And it was actually substantiated in terms of</p> <p>02 the fact that Mr. Ramon Martinez -- do you remember</p> <p>03 him to be the person who did the drawing?</p> <p>04 A. Yes.</p> <p>05 Q. It was actually confirmed that, in fact,</p> <p>06 Mr. Martinez had put the offensive drawing on the</p> <p>07 cardboard recycling; is that true?</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		08 A. I believe it was confirmed, yes.	
34	115:22- 116:21	<p>115:22 Q. If I have it right, it sounds like there's 23 essentially three different simultaneous 24 investigations going on, or at least fact gathering 2 5 going on, relative to Mr. Diaz's complaint about the 116:01 offensive racial drawing? 02 A. Yes. Tesla asked nextSource to gather facts; 03 nextSource complied. They took a statement from Diaz, 04 among that. The employer of the person conducted 05 their own investigation, and that resulted in the 06 disposition of their employee. 07 Q. And the employer was Chartwell; correct? 08 A. Yes. 09 Q. And just so we're clear for the record, the 10 employer of Ramon Martinez, the guy who put up the 11 drawing, was Chartwell; right? 12 A. Yes. Thank you. Yes. 13 Q. Okay. The employer of Mr. Diaz was 14 CitiStaff; right? 15 A. Yes, correct. 16 Q. And both Mr. Ramon Martinez and Mr. Diaz were 17 under the direction and control, during that time 18 period, of Tesla; right? 19 A. Yes. Both individuals were workers at the 20 Tesla site under the day-to-day direction of Tesla 21 management directors, whatever it is.</p>	<p>Counterdesignation: 114:19- 115:21. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>19 Q. Okay. Do you know what the conclusion was of 20 the investigation into Mr. Diaz's complaint about the 21 offensive drawing? 22 A. Yes. 23 Q. And what was the conclusion as to Mr. Diaz's 24 complaint about the offensive drawing? 25 A. My understanding is that his employer, 1 Chartwell, suspended the offending person, Martinez. 2 Q. And did nextSource come to a conclusion on 3 its own as to whether or not Mr. Ramon Martinez had 4 engaged in the harassing conduct that Mr. Diaz had 5 complained about? 6 A. I don't know if I</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			would say that nextSource
2			7 came to a conclusion.
3			During the fact gathering,
4			8 there was definitely --
5			you know, there's
6			9 communication between
7			Wayne and, say, Terry,
8			that
9			10 would speak to -- as
10			they were gathering the
11			facts,
12			11 but the disposition of
13			that is ultimately decided
14			by
15			12 Tesla in, say,
16			partnership at Tesla, and
17			directed to
18			13 the supplier, and I
19			believe at the same time,
20			I think
21			14 I'm neglecting to share
22			here, the supplier
23			conducted
24			15 their own
25			investigation. They had
26			their own fact
27			16 gathering going on
28			during this parallel time.

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>17 So to say the</p> <p>nextSource -- you know,</p> <p>the</p> <p>18 nextSource conclusion,</p> <p>the supplier had their own</p> <p>19 fact-gathering</p> <p>investigation going on</p> <p>with their own</p> <p>20 conclusion, and that's</p> <p>what led to the -- I</p> <p>believe,</p> <p>21 to the suspension of the person.</p>
35	119:15- 119:23	<p>119:15 Q. Do you recognize Exhibit 169?</p> <p>16 A. Yes.</p> <p>17 Q. And what is 169?</p> <p>18 A. This appears to be an email from Nancy to</p> <p>19 Tesla security, asking for an on-site badge to be</p> <p>20 given to Owen Diaz so he can start -- so he can</p> <p>work</p> <p>21 on premises at Tesla, or not work, but show up at</p> <p>22 Tesla and get in. Access to the site is what I</p> <p>23 interpret this to be.</p>	<p><u>Counterdesignation:</u> 119:2-8.</p> <p>Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>2 Nancy Uhlenbrock, does</p> <p>that name ring a bell?</p> <p>3 A. Yes, I know the name.</p> <p>She didn't work here</p> <p>4 when I -- I had joined</p> <p>after, I believe, she had</p> <p>left.</p> <p>5 Q. Okay. What was her</p> <p>role?</p> <p>6 A. I believe Nancy</p> <p>preceded Wayne in the</p> <p>Tesla</p> <p>7 program team, probably</p> <p>when it first rolled out,</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			if I 8 had to guess.
36	122:22- 123:10	<p>122:22 In terms of the types of jobs that people 23 were performing at Tesla, were there differences 24 between the types of jobs that Chartwell employees 25 were performing, versus CitiStaff jobs? 123:01 MR. GELLER: Vague and ambiguous, outside the 02 scope of the deposition. 03 THE WITNESS: So I don't know the contract 04 specifics with which supplier had the preponderance of 05 employees working at which department. So I know that 06 Tesla had roughly nine to 10 departments under which 07 nextSource was, you know, having suppliers fill. The 08 production department is the largest of those, I 09 believe. So I really couldn't answer your question 10 with specificity.</p>	Lacks personal knowledge because deponent does not know what the contract specifies. Fed. R. Evid. 602.
37	128:07- 128:20	<p>128:07 Q. So TAMS is the software that nextSource 08 provides for its suppliers; is that correct? 09 A. Yes. 10 Q. And the suppliers then enter information 11 about their employees who are providing services to 12 Tesla in the TAMS system? 13 A. Yes. The employees of the suppliers will 14 directly go into TAMS and enter their time and submit 15 their timesheet. The employees do that directly. 16 And then the manager -- we refer to them as 17 the hiring manager over at the client site -- will 18 approve -- a client person, employee -- the client 19 will approve the submitted timesheets by those 20 suppliers. We provide the vehicle for that.</p>	
38	128:22- 129:02	<p>128:22 So if, let's say, CitiStaff supplies an 23 employee to Tesla, in that situation the employee who 24 is working at the Tesla factory through CitiStaff, 25 enters their information in the TAMS system, that's 129:01 sort of the first step; right? 02 A. Yes.</p>	
39	129:14- 129:18	<p>129:14 So if I have it right, then the -- so an 15 employee from, let's say, CitiStaff, which is a 16 supplier, enters their time into the TAMS system, that 17 is then approved by a Tesla manager; is that</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		right? 18 A. Yes.	
40	131:06- 133:11	<p>131 6 In terms of how nextSource gets paid for the</p> <p>07 employees that are recruited through the suppliers,</p> <p>08 how do you get paid for those employees?</p> <p>09 MR. GELLER: It's vague, and I also object to</p> <p>10 the form of the question.</p> <p>11 Go ahead.</p> <p>12 THE WITNESS: I'll speak generally on this</p> <p>13 because I don't -- I'll speak generally about this.</p> <p>14 So suppliers will submit their timesheets</p> <p>15 through the system. The client will approve the</p> <p>16 timesheets. What happens here is nextSource will</p> <p>--</p> <p>17 nextSource professionals will pull data from the</p> <p>18 system and prepare a billing to the client. Client</p> <p>19 pays nextSource, then nextSource pays its</p> <p>suppliers.</p> <p>20 And the last thing I'll say about this, you</p> <p>21 remember there's a contractual relationship</p> <p>between</p> <p>22 nextSource and Tesla, under which one of the</p> <p>items I</p> <p>23 failed to mention earlier, one of the key items we</p> <p>24 provide, consolidated billing, meaning that it's</p> <p>25 easier for the client to approve one summary bill</p> <p>than</p> <p>132:01 it is a hundred bills from a hundred suppliers.</p> <p>So</p> <p>02 the consolidated billing is prepared by nextSource</p> <p>as</p> <p>03 the MSP to the client. And the client pays</p> <p>04 nextSource; nextSource pays the various</p> <p>suppliers.</p> <p>05 Q. Okay. So for example, in the Tesla</p> <p>06 situation, just taking the two main suppliers</p> <p>there,</p> <p>07 Chartwell and CitiStaff, the Chartwell</p> <p>CitiStaff</p> <p>08 employees who are working under the</p> <p>direction and</p> <p>09 control of Tesla, they enter their time into the</p> <p>TAMS</p> <p>10 system. The TAMS system then gets -- that</p> <p>time gets</p> <p>11 approved by Tesla, and then nextSource bills</p> <p>for that</p> <p>12 time, consolidated for both CitiStaff and</p> <p>Chartwell;</p> <p>13 is that correct?</p> <p>14 MR. GELLER: Misstates his testimony.</p> <p>15 THE WITNESS: The timesheets are submitted by</p> <p>16 the workers of the suppliers. The consolidated</p>	<p>Testimony is cumulative, wastes time and would cause undue delay. The same testimony was provided by designations 9, 16, 29, 30, and 42. Fed. R. Evid. 403.</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>17 billing is prepared by -- the timesheets get approved</p> <p>18 by the client. We refer to them as the hiring</p> <p>19 manager, usually.</p> <p>20 The consolidated billing is prepared by</p> <p>21 nextSource, presented to Tesla. Tesla pays</p> <p>22 nextSource; nextSource pays its suppliers. That's</p> <p>a</p> <p>23 general -- that is how these arrangements work.</p> <p>24 MR. ORGAN: Q. And that's your understanding</p> <p>25 of how the arrangements work with Tesla; is that</p> <p>133:01 correct?</p> <p>02 A. Yes.</p> <p>03 Q. You mentioned that the Tesla people who</p> <p>04 approve the time that is put in by the various</p> <p>05 suppliers' employees, those are often referred</p> <p>to as</p> <p>06 hiring managers; is that true?</p> <p>07 A. Yeah, that is the -- that's our term for the</p> <p>08 Tesla personnel that are over the account.</p> <p>Because</p> <p>09 we, again -- because we view Tesla as the day-to-</p> <p>day</p> <p>10 manager of the workers. They get the direction</p> <p>from</p> <p>11 Tesla.</p>	
41	133:15- 134:24	<p>133:15 MR. ORGAN: Exhibit 173, for the record, is</p> <p>a</p> <p>16 one-page document Bates stamped NS-193, and</p> <p>it's a</p> <p>17 series of emails from August 17th and August</p> <p>18 18th of</p> <p>19 2015, from Victor Quintero to Nancy</p> <p>Uhlenbrock, and</p> <p>20 then from her back to him.</p> <p>20 Q. Have you seen these documents previously -</p> <p>-</p> <p>21 this document previously?</p> <p>22 A. I reviewed a number of documents.</p> <p>23 Q. Fair enough.</p> <p>24 In terms of Mr. Diaz's employment, it appears</p> <p>25 from the lower email, the first email from</p> <p>Victor</p> <p>134:01 Quintero, that he is approving or making</p> <p>changes to --</p> <p>02 that altered Mr. Diaz's work from the day shift</p> <p>to the</p> <p>03 grave shift, and that he's making him a lead.</p> <p>04 Do you see that?</p> <p>05 A. Yes.</p> <p>06 Q. Does that comport with your understanding</p> <p>of</p> <p>07 the role that the client plays, in terms of an</p> <p>08 employee of a supplier?</p> <p>09 MR. GELLER: Vague and ambiguous.</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>Outside</p> <p>10 the scope of the deposition.</p> <p>11 THE WITNESS: This is an email in which the</p> <p>12 client is directing two things to be done. One is</p> <p>13 for</p> <p>14 the worker to change shifts, so the client's</p> <p>15 directing</p> <p>16 a change in shift. And secondly, the client is</p> <p>17 setting the pay rate for this person to -- looks like</p> <p>18 he got an increase, apparently. So I see two</p> <p>19 directions from the client on this.</p> <p>20 MR. ORGAN: Q. And that's typically how</p> <p>21 changes to assignments and pay happens in the</p> <p>22 relationship that nextSource had with Tesla; is</p> <p>23 that</p> <p>24 right?</p> <p>25 A. Yes. An email could be one vehicle, could be</p> <p>26 other -- you know, the system could be another</p> <p>27 place</p> <p>28 you do that.</p>	
42	137:16- 138:05	<p>137:16 "QUESTION: So nextSource gets into the</p> <p>17 possess of setting up the records for employees in</p> <p>18 a</p> <p>19 system, employees of suppliers in the</p> <p>20 timekeeping</p> <p>21 system that you have, that MAP system; right?")</p> <p>22 MR. GELLER: Vague and ambiguous and</p> <p>23 misstates his testimony.</p> <p>24 THE WITNESS: I would push back on the word</p> <p>25 "process" of that. NextSource would configure</p> <p>26 the</p> <p>27 systems to facilitate the timekeeping between the</p> <p>28 supplier workers and the client approver of those</p> <p>138:01 workers. And this email seems to comport</p> <p>138:02 with that</p> <p>138:03 setup.</p> <p>138:04 MR. ORGAN: Q. "This email" being Exhibit</p> <p>138:05 174.</p> <p>138:06 A. Yes, Exhibit 174.</p>	
43	138:15- 139:02	<p>138:15 Have you seen Exhibit 38 before?</p> <p>138:16 A. Yes.</p> <p>138:17 Q. Exhibit 38 is the initial complaint that you</p> <p>138:18 understand Mr. Diaz made relative to the</p> <p>138:19 racist effigy</p> <p>138:20 and drawing; is that correct?</p> <p>138:21 A. Yes.</p> <p>138:22 Q. And you understand that the complaint</p> <p>138:23 regarding what he considered to be a picture</p> <p>138:24 of a</p> <p>138:25 cartoon depicting a black-face person with a</p> <p>138:26 bone in</p> <p>138:27 his hair, with a caption under it saying "boo,"</p> <p>138:28 that's</p> <p>139:01 how Mr. Diaz described it; right? If you look</p> <p>139:02 at the</p>	<p><u>Counterdesignation:</u> 139:3-4,</p> <p>139:8-9. Rule of completeness.</p> <p>Fed. R. Evid. 106; Fed. R. Civ.</p> <p>P. 32(a).</p> <p>3 Q. And then Mr. Diaz</p> <p>mentions in here that</p> <p>4 Mr. Martinez admitted</p> <p>that he drew the picture;</p> <p>right?</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		139:01 last email, which is on page 22. 02 A. Yes.	8 THE WITNESS: Yeah, I see that statement in 9 this email.
44	139:17- 141:04	139:17 Q. So at least as of 8:46 a.m. on January 22nd, 18 2016, Wayne Jackson at nextSource had the information 19 that was in Mr. Diaz's email to Mr. Romero; is that 20 correct? 21 A. Yes. 22 Q. And if you look at the bottom of Mr. Diaz's 23 email, he said, "A person should be able to come to 24 work and not be harassed and degraded while they're 25 trying to do their job." 140:01 You would agree with that statement; right? 02 A. I'm sorry, where -- 03 MR. GELLER: What page, Counsel? 04 MR. ORGAN: Back to 22, which is where the 05 first picture is. 06 Q. If you look at the bottom of that paragraph, 07 like the fourth-to-last sentence, it says, "A person 08 should be able to come to work and not be harassed or 09 degraded while they're trying to do their job." 10 You would agree with that statement; right? 11 A. I would agree generally that workers should 12 not be harassed or discriminated against in the 13 workplace. 14 Q. And you would agree that Mr. Diaz shouldn't 15 have been harassed or discriminated against in the 16 workplace; right? 17 A. Yes. 18 Q. And if you look at the next sentence, it 19 says, "This is not the first time Ramon Martinez has 20 been talk about his behavior." 21 I assume that means "talked about" regarding 22 his behavior. 23 Do you know if nextSource did any 24 investigation into that sentence about prior conduct 25 by Mr. Martinez? 141: 01 A. I'm not aware that nextSource was advised of	Counterdesignation: 139:10- 139:16. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a). 10 MR. ORGAN: Q. And in fact, that was an 11 email that was then forwarded to nextSource; correct? 12 A. This email appears to have been forwarded 13 from Diaz to Mr. Ed Romero at Tesla, and then Mr. Ed 14 Romero at Tesla -- I'm sorry, and also at the same 15 time, forwarding from Owen Diaz to Wayne Jackson, the 16 same day.

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>02 prior conduct by Mr. Martinez, so I can't speculate on</p> <p>03 whether we were aware or not or investigated or not</p> <p>04 any prior incident that's referenced here.</p>	
45	142:05-143:01	<p>142:05 If something had been raised to nextSource</p> <p>06 prior to this email, then that would be something that</p> <p>07 certainly you would go back to when you're doing the</p> <p>08 investigation into the "picaninny" or into this effigy</p> <p>09 and drawing, right, racist effigy and drawing?</p> <p>10 MR. GELLER: Objection to the form of the</p> <p>11 question, misstates his testimony, asked and answered.</p> <p>12 THE WITNESS: Yeah, as I said earlier, if</p> <p>13 there was another incident, we would have taken that</p> <p>14 on a case-by-case basis and followed up.</p> <p>15 MR. ORGAN: Okay.</p> <p>16 Q. And his next sentence says, "As an employee,</p> <p>17 I'm entitled to a safe and harassment-free work</p> <p>18 environment."</p> <p>19 That's true for any employees who are brought</p> <p>20 to Tesla by your suppliers; right?</p> <p>21 A. Yeah. As a general statement, an employee is</p> <p>22 entitled to a safe and harassment work free. I would</p> <p>23 agree with that, a statement such like that.</p> <p>24 Q. And that's something that applies to all</p> <p>25 employees; right?</p> <p>143:01 A. Sure.</p>	
46	144:10-146:03	<p>144:10 Q. And then if you look at the next email, which</p> <p>11 is on the first page, that's the 20th, of Exhibit 38,</p> <p>12 it says this is Wayne Jackson, email to Terry Garrett,</p> <p>13 where again talking about the racist effigy and</p> <p>14 drawing, and it says, "I just met with Victor. He</p> <p>15 suggested would do a final written warning for Ramon.</p> <p>16 I told Victor I didn't think that was enough. My</p> <p>17 suggestion to him was a final warning with a three-day</p> <p>18 suspension without pay. Victor thought that was an</p> <p>19 even better idea. Will this be acceptable for you?</p>	<p><u>Counterdesignation:</u> 143:6-144:2, 144:4-144:8. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>6 MR. ORGAN: Q. Now, if you go to the first</p> <p>7 page of -- I'm sorry. Go to the second page of</p> <p>8 Exhibit 38, which is Bates-stamped Tesla 21.</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			
2		20 Sorry for using my Tesla email, but I'm having	9 There's an email from
3		21 connectivity issues up here with my nextSource	Terry Garrett to Wayne
4		22 computer."	10 Jackson on January 22nd
5		23 So this again appears to be an interaction	at 9:33 a.m., and it
6		24 between Mr. Jackson and Ms. Garrett, where	appears
7		25 they're	11 that she's documenting
8		26 talking about what they consider to be the	-- Ms. Garrett's
9		27 appropriate	documenting a
10		145:01 course of action. Is that how it seems to	12 conversation she had
11		you?	with Wayne Jackson.
12		02 MR. GELLER: Calls for speculation.	13 Do you see that?
13		03 THE WITNESS: I see two emails -- I mean, I	14 A. Yes.
14		04 see an email between two nextSource	15 Q. And it says, "There
15		professionals	are two options for
16		05 discussing this incident, yes.	16 Ramon. 1 is a strong
17		06 MR. ORGAN: Q. And it appears to you that	warning and grounds for
18		07 the two nextSource professionals, Wayne Jackson	17 termination if he has
19		and	another mishap on any
20		08 Terry Garrett, are discussing what's the	level, and
21		appropriate	18 2 is termination due to
22		09 level of discipline for Ramon Martinez, based on	the level of insult to the
23		his	19 workforce and zero
24		10 racist effigy and drawing; is that right?	tolerance policy at
25		11 A. Yeah, in reading the email from Wayne to	Tesla."
26		12 Terry, it looks like Wayne suggested something,	20 Do you see that?
27		but	21 A. Yes.
28		13 Victor -- I assume he's talking about Victor.	22 Q. These are
		14 Q. Quintero?	recommendations that are
		15 A. The client, hiring manager, it was Victor's	
		16 decision to go with whatever was done here. So	
		he	
		17 discussed it with Victor -- so to back up,	
		18 nextSource's role in the scenario is take the	
		19 information, bring it to the client. Client decides	
		20 what to do, and then nextSource brings that to the	
		21 supplier and advises the supplier of client's	
		wishes	
		22 and direction.	
		23 So this looks like some dialogue with	
		24 nextSource and the client, where Victor decided	
		that	
		25 a -- in this case, a final warning and a three-day	
		146:01 suspension.	
		02 Q. Was appropriate?	
		03 A. Yes, I'm sorry, was appropriate.	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>made</p> <p>23 essentially to Tesla,</p> <p>which then Tesla gets to</p> <p>either</p> <p>24 approve or not approve.</p> <p>Is that how this process</p> <p>25 works?</p> <p>1 A. No.</p> <p>2 Q. Okay. Tell me how the process</p> <p>works.</p> <p>4 THE WITNESS: I see in</p> <p>this email two</p> <p>5 nextSource professionals</p> <p>dialoguing between</p> <p>6 themselves. Tesla's not</p> <p>on this email. I see them</p> <p>7 conferring between</p> <p>themselves. That's all I</p> <p>can say</p> <p>8 about that.</p>
47	150:09- 152:03	<p>150:09 Q. In fact, the only information you have</p> <p>is</p> <p>10 that Wayne Jackson did meet with Victor</p> <p>Quintero;</p> <p>11 correct?</p> <p>12 A. According to this email, that is what this</p> <p>13 says, yes. I agree this email does state that, and --</p> <p>14 Q. You have no reason to doubt Mr. Jackson's</p> <p>15 statement here that he met with Victor</p> <p>Quintero, do</p> <p>16 you?</p> <p>17 A. I have no reason to doubt. Yes.</p> <p>18 Q. Okay. And in fact, that would be part of the</p> <p>19 appropriate protocol, based on what you've</p> <p>already</p> <p>20 testified to, as to what role Wayne Jackson was</p> <p>21 playing in the investigation of Mr. Diaz's</p> <p>complaint;</p> <p>22 correct?</p>	<p>Deponent does not have personal</p> <p>knowledge and is only relying on</p> <p>what the email said. Fed. R.</p> <p>Evid. 602.</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>23 A. He would. Wayne would gather the facts and</p> <p>24 have a discussion with the client as to what the</p> <p>25 client wants to be done. So he will take -- the</p> <p>151:01 program manager will take the direction and</p> <p>wishes of</p> <p>02 the client back to the supplier, so this appears to</p> <p>be</p> <p>03 all within the course of that process, yes.</p> <p>04 Q. Okay. And then if you look at the next</p> <p>05 sentence, it says, "He" -- meaning Victor --</p> <p>06 "suggested that we do a final written warning</p> <p>for</p> <p>07 Ramon."</p> <p>08 You see that; right?</p> <p>09 A. Yes.</p> <p>10 Q. And it appears that Mr. Jackson indicated</p> <p>to</p> <p>11 Mr. Quintero that he didn't think a final</p> <p>written</p> <p>12 warning was sufficient discipline; right?</p> <p>13 A. I see the -- I see that in the email, yes.</p> <p>14 Q. And that's your understanding of what</p> <p>15 happened in the meeting with Wayne Jackson</p> <p>and Victor</p> <p>16 Quintero; right?</p> <p>17 MR. GELLER: Calls for speculation.</p> <p>18 THE WITNESS: According to this email, that's</p> <p>19 the face of what the meeting was about -- what</p> <p>20 occurred in the meeting right here.</p> <p>21 MR. ORGAN: Q. And as far as nextSource is</p> <p>22 concerned, that's nextSource's understanding what</p> <p>23 happened in the meeting between Wayne Jackson</p> <p>and</p> <p>24 Victor Quintero; correct?</p> <p>25 MR. GELLER: Calls for speculation.</p> <p>152:01 THE WITNESS: Again, I don't know what</p> <p>other</p> <p>02 communications happened, but within the email</p> <p>here,</p> <p>03 yes, I agree that's what the email states.</p>	
48	152:17- 153:06	<p>152:17 You're not aware of any notes that</p> <p>18 Mr. Jackson took of his meeting with Victor</p> <p>Quintero</p> <p>19 on or about January 22nd of 2016; correct?</p> <p>20 A. No.</p> <p>21 Q. "No," you're not aware of any notes?</p> <p>22 A. No, I'm not aware of any notes, that's</p> <p>23 correct.</p> <p>24 Q. Okay. You understand that Mr. Quintero's</p> <p>25 first suggestion was to only do a written</p> <p>warning,</p> <p>153:01 correct, a final written warning for Ramon</p> <p>Martinez?</p> <p>02 MR. GELLER: Calls for speculation.</p> <p>03 THE WITNESS: I mean, that's what's</p>	152:24-153:06. Deponent does not have personal knowledge and is only relying on what the email said. Fed. R. Evid. 602.

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>04 articulated in the email here. I read the sentence as</p> <p>05 you do: "He suggested we do a final written warning</p> <p>06 for Ramon." That's what's on this email.</p>	
49	157:18-157:23	<p>157:18 My question's a little different. And that</p> <p>19 is, in terms of following up, nextSource as the</p> <p>20 intermediary would do at least some follow-up to make</p> <p>21 sure that its client's wishes were, indeed, carried</p> <p>22 out; right?</p> <p>23 A. Yes.</p>	
50	158:12-159:04	<p>158:12 Q. These three important things that</p> <p>Terry</p> <p>13 Garrett's suggesting here, these are things that</p> <p>14 nextSource is going to try to follow up with</p> <p>relative</p> <p>15 to Chartwell; correct?</p> <p>16 A. Yeah, I see the -- again, the email between</p> <p>17 two nextSource professionals with these bullets on</p> <p>18 here. I also see where she says, "Do not take</p> <p>action</p> <p>19 until Tesla HR weighs in." So the decision maker,</p> <p>20 obviously is Tesla in this case, HR. I also see that</p> <p>21 Terry had just gotten off a call: "Just got off the</p> <p>22 call for Tesla."</p> <p>23 So apparently, she just left a call with</p> <p>24 Tesla, generated these three things, and then</p> <p>asked</p> <p>25 Wayne not to move forward until Tesla HR</p> <p>weighs in.</p> <p>159:01 Q. Okay. So contacting Tesla HR was</p> <p>02 anticipated, it looks like, from Terry Garrett's</p> <p>email</p> <p>03 at 6:35 p.m. on the 22nd; is that right?</p> <p>04 A. Yes.</p>	
51	159:13-159:21	<p>159:13 MR. ORGAN: Q. Let me ask you this: The</p> <p>14 third item under "three important things," says,</p> <p>15 "Let's send out an update to the workforce on the</p> <p>16 seriousness of this type of offense, and remind</p> <p>them</p> <p>17 of zero tolerance policy."</p> <p>18 Do you have any information that that was</p> <p>19 ever done?</p> <p>20 A. I do not. I do not know if that was ever</p> <p>21 done.</p>	<p><u>Counterdesignation:</u> 159:5-159:8, 159:10-159:12. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>5 Q. And then the three</p> <p>steps here, as far as</p> <p>6 nextSource is concerned,</p> <p>your understanding is that</p> <p>7 these three steps were</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>at least pursued by</p> <p>nextSource;</p> <p>8 correct?</p> <p>10 THE WITNESS: I don't</p> <p>know if these three</p> <p>11 steps were pursued by</p> <p>nextSource, so I don't</p> <p>know</p> <p>12 that.</p>
52	162:10- 163:11	<p>162:10 Exhibit 130, for the record, is a four-page</p> <p>11 document Bates-stamped Tesla 4 through 7.</p> <p>And it's,</p> <p>12 again, a series of emails that start with Mr.</p> <p>Diaz's</p> <p>13 complaint about the racist effigy and drawing.</p> <p>I'm</p> <p>14 actually concerned only with the emails on the</p> <p>top.</p> <p>15 There's a discussion here or email exchange</p> <p>16 with Wayne and Veronica Martinez of</p> <p>Chartwell staff.</p> <p>17 This follows the protocol that I think you</p> <p>discussed</p> <p>18 earlier, where nextSource works both with the</p> <p>client</p> <p>19 and with the supplier; is that true?</p> <p>20 A. That's correct.</p> <p>21 Q. And it appears here that Mr. Jackson is</p> <p>22 coordinating or making sure that Chartwell is</p> <p>aware of</p> <p>23 the problem relative to the Chartwell employee</p> <p>Ramon</p> <p>24 Martinez; right?</p> <p>25 A. Yeah, it looks to me that Wayne is advising</p> <p>163:01 Mr. Martinez on January 22nd of this series,</p> <p>in his</p> <p>02 words: Serious, came up today.</p> <p>03 Yeah, it's clear that Wayne is reaching out</p> <p>04 to Chartwell as to what their policy is and</p> <p>advising</p> <p>05 them of this issue by their employee.</p> <p>06 Q. Okay. And then it appears that Veronica</p> <p>07 Martinez from Chartwell is reporting back to</p> <p>Wayne and</p> <p>08 letting him know that they're going to start an</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		09 investigation and that she's notified her HR director; 10 right? 11 A. Yes.	
53	165:12- 165:15	165:12 Q. I'm just wondering if you're aware of any 13 notes of Mr. Jackson's conversations with either Ramon 14 Martinez or Owen Diaz. 15 A. No.	<p><u>Counterdesignation:</u> 165:1-11. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>1 Q. Are you aware of any notes that were created 2 in terms of Mr. Jackson talking to Ramon Martinez or 3 Owen Diaz?</p> <p>4 A. Notes that Wayne Jackson would have taken?</p> <p>5 Q. Yes.</p> <p>6 A. No. I see these dialogues here. Actually, I 7 do see where it says "Diaz stated that he was fine 8 with that. I just wanted it to be addressed. So 9 interesting, so Wayne follows up with Diaz, saying 10 he's taking the issue seriously, so it's following up 11 with Owen, it looks like, in this</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			trail.
54	168:06- 168:16	<p>168:06 MR. ORGAN: Q. Yes. Was it made? Did you</p> <p>07 consider -- did nextSource consider the complaint by</p> <p>08 Mr. Diaz to be a serious complaint?</p> <p>09 A. I would -- reading this, I would say yes.</p> <p>10 Q. After Mr. Jackson talked to Owen Diaz, per</p> <p>11 our last exhibit, 175, do you know if there was any</p> <p>12 follow-up by anybody at nextSource to see how Mr. Diaz</p> <p>13 was doing after the conduct was directed at him?</p> <p>14 A. I am not aware. I'm not aware of any</p> <p>15 follow-up. Whether it does or does not exist, I can't</p> <p>16 say.</p>	
55	171:05- 172:07	<p>171:05 Prior to the litigation, was nextSource ever</p> <p>06 aware that Judy Timbreza was accused of using the "N"</p> <p>07 word, or a version thereof, towards Owen Diaz?</p> <p>08 A. Prior to the litigation, no, nextSource was</p> <p>09 not involved, did not investigate, did not fact-gather</p> <p>10 anything around that incident.</p> <p>11 Q. Certainly, if nextSource became aware of the</p> <p>12 use of the "N" word at the Tesla factory, they would</p> <p>13 gather facts about that information; right?</p> <p>14 MR. GELLER: Calls for speculation.</p> <p>15 MS. SWAFFORD-HARRIS: Tesla joins. It's also</p> <p>16 incomplete hypothetical.</p> <p>17 THE WITNESS: Yes, theoretically speculating</p> <p>18 that if we're aware of a nextSource associate or a</p> <p>19 nextSource supplier employee doing something such as</p> <p>20 that, I would speculate that we would gather the facts</p> <p>21 on that.</p> <p>22 MR. ORGAN: Q. And the reason you would</p> <p>23 gather the facts on that is, use of the "N" word is</p> <p>24 highly offensive conduct; right?</p> <p>25 A. Yes.</p> <p>172:01 MR. GELLER: Speculation.</p> <p>02 THE WITNESS: Yeah. Personally, it's a</p> <p>03 highly offensive. That's one of those zero tolerance.</p> <p>04 I believe nextSource, the position would be the same.</p> <p>05 An account person of nextSource, I would assume, would</p>	171:11-172:07. Deponent testified he was speculating, and is not based on personal knowledge and it is improper hypothetical lay opinion testimony not "rationally based on the witness's perception" and deponent was not disclosed as an expert. Fed. R. Evid. 601, 701.

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>06 have the same reaction, if that were -- behavior were</p> <p>07 existing. That's speculating.</p>	
56	172:25-173:03	<p>172:25 MR. ORGAN: Q. Well, I'm just -- we know</p> <p>173:01 that Ramon Martinez was a supplier employee through</p> <p>02 Chartwell; right?</p> <p>03 A. Yes.</p>	Deponent testified (173:4-173:9) that he did not know that Ramon Martinez was a supervisor but said "I'll accept he was a supervisor there" and thus testimony is speculative and not based on personal knowledge. Fed. R. Evid. 602.
57	173:10-173:14	<p>173:10 Q. So Mr. Martinez would at least be an example,</p> <p>11 given his role at the Tesla factory, would be an</p> <p>12 example of a supplier's employee being in a supervisor</p> <p>13 role at the Tesla factory; right?</p> <p>14 A. I would agree.</p>	Deponent testified (173:4-173:9) that he did not know that Ramon Martinez was a supervisor but said "I'll accept he was a supervisor there" and thus testimony is speculative and not based on personal knowledge. Fed. R. Evid. 602.
58	180:18-182:05	<p>180:18 Exhibit 91, for the record, is a two-page</p> <p>19 document Bates-stamped CitiStaff 6 and 7.</p> <p>And the</p> <p>20 first -- it's two emails, one from January 28th of</p> <p>21 2016, and then the top one from February 2nd of 2016.</p> <p>22 And it appears that -- I guess my question is this:</p> <p>23 Why would Vanessa Parks be emailing to</p> <p>24 Monica De Leon</p> <p>25 from CitiStaff about pay increase -- pay rate</p> <p>26 increases to the following contractors. Why</p> <p>27 would she</p> <p>181:01 be doing that?</p> <p>02 MR. GELLER: Excuse me. Calls for</p> <p>03 speculation. It's outside the scope of the</p> <p>04 deposition.</p> <p>05 Go ahead.</p> <p>06 THE WITNESS: Yeah, this is normal. I'd</p> <p>07 speculate what I'm saying here is, in connection with</p> <p>08 the email from three days prior -- I don't know if it</p> <p>09 was Thursday -- where Tesla directed nextSource to</p> <p>10 make the administrative change in the VMS system, this</p> <p>11 is the other side of that -- it's client to</p> <p>12 nextSource. Right? This is the other side. This is</p> <p>13 nextSource telling the supplier, right, that Tesla</p> <p>14 wants this pay rate changed.</p> <p>15 So the direction starts with Tesla, Ed</p>	<p>Counterdesignation: 179:23-180:14. Rule of completeness since designated testimony refers to Exhibit 178 (181:24-182:1), which is the exhibit discussed in the counterdesignation. Fed. R. Evid. 106, Fed. R. Civ. P. 32(a).</p> <p>23 MR. ORGAN: Exhibit 178, for the record, is a</p> <p>24 one-page document</p> <p>Bates-stamped NS-25. It appears to</p> <p>25 be an email from Ed Romero to Wayne Jackson, and then</p> <p>1 an email from Vanessa Parks back to Ed Romero.</p> <p>2 Q. This, again, is sort of the typical procedure</p> <p>3 that would go back and forth between Tesla and</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>16 Romero. Funnels through the facilitator, nextSource,</p> <p>17 who changes the VMS and then who takes that same pay</p> <p>18 change that Tesla directed, and directs --</p> <p>19 communicates to the supplier Tesla's wishes.</p> <p>20 So this is the other side of the</p> <p>21 communication, starting with the client on a pay</p> <p>22 change. So this is, I would characterize it as</p> <p>23 standard.</p> <p>24 MR. ORGAN: Q. So in other words, Exhibit 91</p> <p>25 is the other side of Exhibit 178?</p> <p>182:01 A. Yes.</p> <p>02 Q. Okay.</p> <p>03 A. That's three days later. That's exactly what</p> <p>04 it is. And this is -- in my view, they're both</p> <p>05 normal.</p>	<p>4 nextSource relative to</p> <p>employees supplied through</p> <p>5 nextSource suppliers; is</p> <p>that correct?</p> <p>6 A. This email is a Ed</p> <p>Romero, the employee of</p> <p>7 Tesla, directing Wayne</p> <p>to make a change to the</p> <p>pay</p> <p>8 rate. I'm assuming he</p> <p>means in TAMS.</p> <p>9 So we talked about the</p> <p>TAMS maintenance as</p> <p>10 one of our functions.</p> <p>So to the degree this is</p> <p>him</p> <p>11 saying change the TAMS</p> <p>rate to go from 16 to 18,</p> <p>then,</p> <p>12 yes, that would be a</p> <p>normal function directed</p> <p>by the</p> <p>13 client to make --</p> <p>administer changes in the</p> <p>tool.</p> <p>14 That would be normal.</p>
59	184:18-185:23	<p>184:18 Exhibit 140, for the record, is a one-page</p> <p>19 document Bates-stamped CitiStaff 9, and it's</p> <p>two</p> <p>20 emails from March 18th of 2018, between --</p> <p>back and</p>	<p>Counterdesignation: 184:6-184:15. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>21 forth between Monica De Leon and Wayne Jackson.</p> <p>22 Does this refresh your recollection about the 23 events leading to Mr. Diaz's termination from Tesla?</p> <p>24 MR. GELLER: Objection; misstates the 25 witness's testimony.</p> <p>185:01 MS. SWAFFORD-HARRIS: Join.</p> <p>02 THE WITNESS: Yeah, his assignment ended. So 03 the assignment, on the -- apparently the night shift 04 ended, and he was nonresponsive to go to the night 05 shift -- I got that backwards, but that he was 06 nonresponsive to go to the night shift.</p> <p>07 MR. ORGAN: Q. If you look at the first 08 sentence of Mr. Jackson's email on that same date --</p> <p>09 this is again in the bottom email -- it says, 10 "Unfortunately, we will have to term the assignment of 11 Owen Diaz."</p> <p>12 What does that mean? I assume that means 13 terminate the assignment of Owen Diaz. Is that your 14 understanding of that?</p> <p>15 A. Yes, assignment is literally a record in the 16 tool that a worker gets attached to. So they were on 17 an assignment, right, so as a technical matter, when 18 you terminate the assignment, you're closing out. The 19 record has ended. So this is them -- looks like it's 20 Wayne -- I've got to speculate, Wayne advising his 21 employer, CitiStaff, that Tesla has directed his 22 assignment be ended. This is nextSource notifying the 23 supplier employer of that happening.</p>	<p>6 Q. And then this, again, goes to the issue that 7 you identified about Owen Diaz not getting back to 8 either Wayne or Tesla about his desires relative to 9 moving shifts; is that right?</p> <p>10 A. Correct.</p> <p>11 Q. Okay.</p> <p>12 A. I'm sorry, I want to add, there was outreach 13 to Mr. Diaz about taking the day shift, and he was 14 nonresponsive. That's what this -- this confirms 15 that.</p>
60	188:04- 188:16	<p>188:04 Q. Where Mr. Jackson says "Unfortunately, I 05 think it is time to move forward and term his 06 contract," do you see that?</p> <p>07 A. Yes.</p> <p>08 Q. It would not be Wayne Jackson's place to 09 terminate Mr. Diaz's contract; is that correct?</p> <p>10 A. No. It would be the client's direction to 11 end the assignment. The language here is inartful, 12 but it seems, again, as I said earlier, Owen was -- 13 Mr. Diaz was unresponsive as to the changing of the 14 shift, and apparently, according to this email, 15 refuses to speak with Wayne, if I read this correctly.</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		16 So the lack of response, I think, is evident here.	
61	189:08- 189:14	189:08 MR. ORGAN: Exhibit 180, for the record, is a 09 one-page document Bates-stamped NS-34, and it is 10 emails from March 18th, 2016. 11 Q. It appears that Mr. Jackson -- so Fremont 12 Badging, that's the people -- security at Tesla. Is 13 that your understanding? 14 A. Yes.	Counterdesignation: 189:20- 190:9. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).
62	190:13- 191:09	190:13 MR. ORGAN: Exhibit 181, for the record, is a 14 two-page document Bates-stamped NS-28 and 29. 15 Q. I'm interested in the email at the top from 16 Vanessa Parks to Wayne Jackson, where it says "Owen 17 has no final hours. I will term him out of both 18 systems." 19 Do you know what "both systems" is referring 20 to there? 21 A. Yeah, I'm speculating, but I'm sure -- I'm 22 highly confidently speculating -- that "systems" 23 refers to TAMS, the timesheet management system; that 24 the timesheet's been approved and submitted, and 25 secondly, the Kronos timekeeping system, which has an 191:01 integration into TAMS, so work -- if you want me to 02 elaborate, I'm happy to. 03 The workers at the Tesla site, I believe had 04 a clock system like a punch in/punch out kind of 05 thing. So what we see here is the administratively 06 shutting down access to the Tesla time clock system as 07 well as our timesheet management system, and that 08 would be a function that I would expect our program 09 team to do.	
63	201:14- 202:03	201:14 MR. ORGAN: Q. Certainly, that issue of 15 Mr. Diaz feeling threatened by Ramon Martinez, that 16 was something that nextSource knew about in this 17 mid-October time frame; correct? 18 MR. GELLER: Outside the scope of the 19 deposition. 20 THE WITNESS: Yeah, it does appear nextSource 21 is notified in October 20th, when Mr. Diaz advised 22 Wayne about this. So, yes, in October. 23 MR. ORGAN: Q. And do you know one way or 24 another whether or not any of the yelling or threats	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>25 that Mr. Diaz was complaining about had anything to do</p> <p>202:01 with race or not?</p> <p>02 A. No, I would be speculating to give an answer</p> <p>03 on that.</p>	
64	203:03-203:09	<p>203:03 MR. ORGAN: Q. And in terms of where Terry</p> <p>04 Garrett says that two of the three workers have</p> <p>05 already been interviewed, are you aware of any notes</p> <p>06 that were taken of interviews of employees regarding</p> <p>07 the interaction between Owen Diaz and Ramon Martinez,</p> <p>08 in October of 2015?</p> <p>09 A. No. Notes, no.</p>	<p><u>Counterdesignation:</u> 202:4-202:8, 202:10-202:16. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>4 Q. Would this</p> <p>information have been</p> <p>something</p> <p>5 that you would have</p> <p>wanted to follow up on in</p> <p>the</p> <p>6 January time period,</p> <p>when nextSource was doing</p> <p>fact</p> <p>7 finding about the</p> <p>interaction between Mr.</p> <p>Martinez and</p> <p>8 Mr. Diaz about the</p> <p>racial drawing?</p> <p>10 THE WITNESS: I don't</p> <p>know if these are</p> <p>11 connected as to race. I</p> <p>wouldn't be able to answer</p> <p>12 whether nextSource, to</p> <p>answer your question,</p> <p>whether</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>13 nextSource brought this</p> <p>incident up in the course</p> <p>of</p> <p>14 fact gathering for the</p> <p>racial incident.</p> <p>15 This doesn't appear to</p> <p>be racial, what I'm</p> <p>16 reading here, and that the incident in</p> <p>January did.</p>
65	203:20- 206:22	<p>203:20 Exhibit 126, for the record, is a four-page</p> <p>21 document Bates-stamped Tesla 133 to 136, and</p> <p>they are</p> <p>22 emails, starting with an email from Mr. Diaz</p> <p>about</p> <p>23 Ramon Martinez from October 17th of 2015,</p> <p>and they go</p> <p>24 through October 20th of 2015. And then what</p> <p>I'm</p> <p>25 looking at here is an email from Erin Marconi</p> <p>on the</p> <p>204:01 beginning, at the bottom of page -- I'm</p> <p>sorry.</p> <p>02 This is an email to Erin Marconi at the</p> <p>03 bottom of this, and it says from Terry to Erin:</p> <p>"Yes,</p> <p>04 we're working on this complaint as we speak."</p> <p>05 Then if you go above that, Erin responds and</p> <p>06 says, "Do you think you'll be able to provide</p> <p>the</p> <p>07 summaries from your employee interviews</p> <p>today?"</p> <p>08 And then Terry says, "Yes, I should be able</p> <p>09 to have the information to you by COD today.</p> <p>Thank</p> <p>10 you for your support."</p> <p>11 And I'm just wondering, do you have any</p> <p>12 knowledge as to the employee interviews or</p> <p>any kind of</p> <p>13 written documentation of what was done by</p> <p>Terry</p> <p>14 Garrett relative to Mr. Diaz's complaint about</p> <p>the way</p> <p>15 Ramon Martinez threatened him?</p> <p>16 MR. GELLER: Outside the scope of the</p> <p>17 deposition.</p> <p>18 THE WITNESS: So reading this, it looks</p> <p>19 like -- so it looks like Terry obtained statements</p> <p>20 from -- I use the term "employee." Obtained --</p>	<p>Deponent lacks any personal</p> <p>knowledge about Exhibit 126</p> <p>and Exhibit 127, and is not</p> <p>answering in his capacity as a</p> <p>30(b)(6) designee and thus the</p> <p>testimony is misleading and</p> <p>would confuse the jury. Fed. R.</p> <p>Evid. 403, 602.</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>was</p> <p>21 working on obtaining statements from the supplier</p> <p>22 employees, and she was coordinating back with the</p> <p>23 Tesla client sponsor or among the client Aaron,</p> <p>24 Ms. Marconi, that Terry was pulling the statements</p> <p>25 from the suppliers.</p> <p>205:01 So to answer -- am I aware of the notes that</p> <p>02 she took? Is that the question?</p> <p>03 MR. ORGAN: Q. Yes.</p> <p>04 A. No. I can only speculate as to what she</p> <p>05 would have gathered. I mean, there was clearly some</p> <p>06 statement taking going on, but I have not seen those</p> <p>07 notes.</p> <p>08 Q. Okay. In terms of Erin Marconi's email in</p> <p>09 the middle of the first page of Exhibit 126, it says,</p> <p>10 "Do you think you'll be able to provide the summaries</p> <p>11 from your employee interviews today?"</p> <p>12 Do you have any kind of knowledge as to what</p> <p>13 summaries Erin Marconi is referring to there?</p> <p>14 A. I do not. I would only be speculating.</p> <p>15 Q. Then if we go -- let's go to the next one,</p> <p>16 which is -- this is Exhibit 127.</p> <p>17 Exhibit 127, for the record, is a two-page</p> <p>18 document Bates-stamped Tesla 646 and 647.</p> <p>And they</p> <p>19 are emails. One's a duplicate email down at the</p> <p>20 bottom, Wayne Jackson talking about -- on the phone</p> <p>21 dealing with the Owen and Ramon issue, and then</p> <p>22 there's an email from Terry on the 21st, two days</p> <p>23 later, saying they don't need to do any formal</p> <p>24 investigation, and then an email at the top from Wayne</p> <p>25 Jackson to Terry, saying, "Yes, I've spoken to all</p> <p>206 :01 three and will be speaking with Ramon and Owen again</p> <p>02 on Friday. I had a conversation with Ed at Victor's</p> <p>03 desk yesterday, and they just want to verbally counsel</p> <p>04 each of them with regards to appropriate behavior in</p> <p>05 the workplace. No written warning needed right now."</p> <p>06 Do you have any more knowledge about this</p>	

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>07 incident, or these incidents, now that you've reviewed</p> <p>08 Exhibit 127?</p> <p>09 MR. GELLER: Objection to the form. Calls</p> <p>10 for a narration, and it's outside the scope.</p> <p>11 THE WITNESS: No, I don't. This is -- again,</p> <p>12 this is Wayne and Terry, nextSource professionals</p> <p>13 interacting back and forth with this. And I do not</p> <p>14 have notes or more on this than what's on the</p> <p>15 surface</p> <p>16 of this email.</p> <p>17 Well, I will say I do read that the</p> <p>18 conversation with Ed, which would have been the</p> <p>19 client, Tesla, and they just want us to verbally</p> <p>20 counsel. So that's Tesla giving direction, right, as</p> <p>21 to disposition for the supplier employees. Not</p> <p>22 inconsistent with nextSource being the liaison</p> <p>between</p> <p>22 client and supplier.</p>	

Monica DeLeon

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			General objection to all designations. Testimony is improperly designated because deponent was not a party when deposed, but a former employee of a party, and there is no showing that the deponent is unavailable or falls within any exception to Federal Rule of Civil Procedure 32(a)(4).
1	65:8-14	Q: So do you know if CitiStaff clients such as Tesla issued performance reviews to Citistaff employees? Mr Rutschman: Objection; vague and ambiguous. Calls for speculation. A: So what I recall, yes, they would give some every now and then.	<u>Counterdesignation:</u> 65:16-65:18, 65:22-66:1, 66:5-66:6, 66:9. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a). 16 Q. And so you recall specifically Tesla 17 giving CitiStaff employees performance reviews now 18 and then? 22 THE WITNESS: I recall nextSource. 23 BY MS. AVLONI: 24 Q. You recall nextSource giving CitiStaff 25 employees performance reviews; is that correct? 1 A. Mm-hmm.

1			5 Q. And do you know how
2			often nextSource
3			6 would give CitiStaff
4			employees performance
5			reviews?
6			9 THE WITNESS: No, I don't
7			remember.
8			
9	2	91:22- 92:1	<u>Counterdesignation:</u> 92:12- 92:15, 92:18-92:23. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).
10		Q: So your understanding is that the client would recommend the raises and that CitiStaff would implement those raises?	12 So would CitiStaff to
11		A: So the client would send us any raises or reviews and we would process as follows, yes.	your knowledge
12			13 pretty much always
13			authorize all raise --
14			14 recommendations for
15			employees -- for
16			CitiStaff
17			15 contractors coming
18			from clients?
19			18 THE WITNESS: So for
20			CitiStaff
21			19 contractors, whenever
22			nextSource would send us
23			any
24			20 pay rate changes or
25			increases, raises, I
26			would send
27			
28			

1			21 them to Emilio. Send
2			the e-mail to have a
3			22 confirm --
4			confirmation of it, a
5			written consent.
6			23 And we would process it as follows.
7	3	114:10-18	Q: It was just—to your knowledge you believe nextSource was a client and to your knowledge you don't believe that Tesla was a client of CitiStaff when you were there? Mr. Rutschman: Objection; misstates the witness's prior testimony A: To my knowledge Citistaff helped nextSource provide contractors for—to work at Tesla for Tesla.
8			Not based on personal knowledge because deponent previously was asked (114:4-8) "do you know if Tesla was ever a client of Citistaff" to which deponent responded "no." Fed R. Evid. 602.
9			
10			
11			
12	4	118:10-20	Q: Do you know if Tesla has the ability to recommend termination of a relationship between a CitiStaff contractor working at its facility? [objection] A: In that case I would say yes. If there is—if they're in a department that's far away or—and they're being supervised by them and that supervisor, then yes, I would say in that case they would be able to tell nextSource about the worker's performance.
13			Not based on personal knowledge because deponent did not know if Tesla had the ability to recommend promotion (117:20-118:2) or if Tesla had the ability to discipline employees (118:3-118:8). Fed. R. Evid. 602.
14			
15			
16			
17			

Tom Kawasaki

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			General objection to all designations. Testimony is improperly designated because deponent was not a party when deposed, but a former employee of a party, and there is no showing that the deponent is unavailable or falls within any exception to Federal Rule of Civil Procedure 32(a)(4).
1	42:24-43:2	Q: Okay. Okay. So let me break that down. So you do recall that Mr. Diaz, at least, told you that Mr. Trimbeza had used the N-word towards him? A: Correct Q: And you also recall that other people told you that they had heard racial terms used; is that right? A: Correct	<u>Counterdesignation:</u> 36:20-37:16, 40:23-24, 41:3-41:7, 42:8-42:10, 42:13-22, 44:18-45:15. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a). 20 Q. And do you remember what the nature of the 21 complaint was? 22 A. I vaguely remember. They got into an argument 23 and -- I believe I was doing my route, driving around, 24 making sure everybody was okay, they didn't need any 25 help. Like, when I drove around, if -- if they need to 1 use the bathroom, I would step in and fill the position

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			2 for the five, ten
2			minutes they left to go
3			use the
4			3 bathroom, whatever it
5			is, or get something to
6			eat. I
7			4 mean, we were working
8			12-hours days, I wasn't
9			trying to
10			5 burn anybody out. If
11			they needed a break, they
12			needed a
13			6 break.
14			7 And then he called me -
15			- Owen had called me
16			8 and said he got into
17			altercation, so I drove
18			back to the
19			9 elevators and said what
20			happened and they were
21			arguing
22			10 and I can't -- can't
23			really remember what the
24			argument
25			11 was about, but I -- I
26			think they -- I think
27			some-
28			12 something -- I forget

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			what he said. He said
2			13 something -- that he
3			called him something. I
4			just
5			14 forget what it was,
6			but I have it all down in
7			e-mail. I
8			15 know I e-mailed
9			everything to my
10			immediate supervisor
11			16 that night.
12			23 Q. Okay. And. Mr. --
13			he -- Mr. Diaz alleged
14			24 that Mr. Timreza called Mr. Diaz a
15			dumb N-word, correct?
16			3 THE WITNESS: I put in
17			the document that he
18			4 was saying derogatory
19			term, were raciest in
20			nature. I
21			5 honestly don't remember
22			exactly what was said. I
23			6 can't -- but I know I
24			put it in form and I know
25			they got
26			7 into a very big argument and I had
27			to separate them.
28			8 Q. And that -- as you
			think about it, you

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28			<p>recall</p> <p>9 that -- at least one of the racial slurs he used was 10 dumb nigger; is that right?</p> <p>13 THE WITNESS: It -- I know racial slurs were 14 said. I can't very verify that the N-word was said, but 15 from what they were arguing about, I know Owen said he 16 called me the N-word. I remember Owen saying that he 17 called me the N-word and they were arguing, where they 18 were almost about to get into a fight. So I got into 19 the middle of it and said -- it happened and there was 20 other people around</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			that said it as well,
2			that this
3			21 altercation happened,
4			so in my book, as a
5			supervisor,
6			22 I'm going to separate the two.
7			18 Did Mr. Timreza admit
8			that he had used some
9			19 inappropriate
10			language?
11			20 A. He -- he argued
12			about it and said he
13			didn't do
14			21 it. But at that time,
15			them really arguing,
16			almost
17			22 getting into a fight,
18			and other people in the
19			area
20			23 telling me that --
21			that was said in nature,
22			it was my --
23			24 my decision to say,
24			hey, what -- I can't keep
25			them both
26			25 together and I can't put Judy in
27			another department,
28			1 there's nothing else
			for me to put him, I need

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28			<p>to</p> <p>2 separate these guys and those natures were said.</p> <p>At my</p> <p>3 standpoint, I --</p> <p>there's people around, they said what</p> <p>4 they said. Okay, well, you got to go home. You -</p> <p>-</p> <p>5 that's not -- that's not cool, that's not right, you</p> <p>6 can't do that.</p> <p>7 Q. So -- so based on the information that you</p> <p>8 received from the people that you talked to in the</p> <p>9 general area were Owen and Judy Timbreza were working,</p> <p>10 you -- you made the assessment that Mr. Timreza had at</p> <p>11 least used some inappropriate words, correct?</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>12 A. Correct.</p> <p>13 Q. And based on that</p> <p>14 determination you sent</p> <p>15 Mr. Timreza home,</p> <p>16 correct?</p> <p>17 15 A. Correct.</p> <p>18 23 Q. I just wanted to clarify</p> <p>19 something you</p> <p>20 24 testified about earlier, with</p> <p>21 the altercation between</p> <p>22 25 Judy and Owen.</p>
2	76:7-10	<p>Q: Did—when you were walking around the facility, did you ever hear anyone using the N-word, even if you can't identify them, did you hear the word?</p> <p>A: I mean, I heard it all over the facility. ...</p>	<p>Testimony should be excluded because not pertinent to the allegations raised by Plaintiff, did not involve Plaintiff, did not involve Plaintiff's supervisors, did not involve Plaintiff's alleged harassers, as set forth in Defendant's Motion <i>In Limine</i> No. 3, section 2.</p> <p><u>Counterdesignation:</u> 76:11-77:7, 96:13-97:12. Omits part of deponent's answer and all related testimony. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>11 I mean, it's --</p> <p>there's a bunch of</p> <p>staffing companies,</p> <p>12 man. I mean, you had -</p> <p>- you had a range of</p> <p>people, man.</p> <p>13 Staffing companies</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28			<p>hire -- you go to a staffing company</p> <p>14 because you can't get a job, per se, like a -- I guess a</p> <p>15 real person or whatever, you have a background, whatever</p> <p>16 it is. I mean, we filtered through a lot of people.</p> <p>17 I'm not knocking people for what they do, but it's a</p> <p>18 staffing agency, per se. So you got a wide arrange of</p> <p>19 people.</p> <p>20 Like I said, in our age, that word gets thrown</p> <p>21 around very causally. Now, if you -- there is tones the</p> <p>22 way you say it and what it is, but -- I mean, I've heard</p> <p>23 it thrown around</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>there, yeah.</p> <p>24 Q. How -- how often do you think you heard the</p> <p>25 N-word at the Tesla factory?</p> <p>1 A. I couldn't -- I really could not tell you how</p> <p>2 often I heard it. But, I mean, you hear it. I mean, it</p> <p>3 is what it is.</p> <p>4 Q. Okay.</p> <p>5 A. I don't think nothing of it. I mean, no</p> <p>6 complaints were brought to me, so -- and I don't know</p> <p>7 what was brought to other people, so.</p> <p>13 Q. You testified that you heard the N-word thrown</p> <p>14 around, but you did not think anything of this.</p> <p>15 What did you -- what did you mean by that?</p> <p>16 A. It -- I mean, I drive around the</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28			<p>building,</p> <p>17 people are --</p> <p>whatever, they're on</p> <p>break, they're in the</p> <p>18 cafeteria, they're</p> <p>joking around with each</p> <p>other, you</p> <p>19 know, they're saying</p> <p>the N-word to each other,</p> <p>maybe in</p> <p>20 a cool way or whatever</p> <p>to them, whatever it is.</p> <p>21 I -- just -- it -- it</p> <p>didn't recollect to me</p> <p>22 that that wasn't right</p> <p>or I should say something</p> <p>or</p> <p>23 whatever. It -- like I</p> <p>said, that had nothing to</p> <p>do</p> <p>24 with me. It wasn't</p> <p>hurting me, it wasn't</p> <p>hurting my</p> <p>25 people in doing their job. They</p> <p>weren't my employees.</p> <p>1 It didn't affect me. So</p> <p>I just thought nothing of</p> <p>it.</p> <p>2 It's like walking down</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>the street right now</p> <p>hearing</p> <p>3 somebody saying it.</p> <p>You're not going to think twice,</p> <p>4 you're not going to stop.</p> <p>5 Q. Did you -- did you -</p> <p>- did you think nothing of</p> <p>6 it because you heard it sort of more of a</p> <p>greeting</p> <p>7 between people? Is that what you're saying?</p> <p>8 A. It was -- it wasn't like an argument tone, it</p> <p>9 wasn't in an aggressive tone, so.</p> <p>10 Q. Did you -- did you believe it was not being</p> <p>11 used in an offensive manner?</p> <p>12 A. Yes --</p>
3	81:24-	<p>"Owen said racial slurs were said. The people around him said Judy said racial slurs towards Owen and like I said, my decision at that point was, these guys are about to fight, one of them's got to go home. It was like Judy was the aggressor, saying racial slurs, so I sent him home."</p>	<p>Counterdesignation: 80:23-81:23, 83:11-16, 87:4-81:16, 87:21-87:24. Omits question and first part of deponent's answer and all related testimony. Rule of completeness. Fed. R. Evid.</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>106; Fed. R. Civ. P. 32(a).</p> <p>23 Q. I just wanted to clarify something you 24 testified about earlier, with the altercation between 25 Judy and Owen. 1 I wasn't totally clear. Were you present for 2 that altercation? 3 A. I was not present for the altercation. I came 4 afterwards, when I was called, to come to the 5 altercation, and I was in a different part of the 6 warehouse. I don't recollect where I was in the 7 warehouse. But like I said, I had so many different 8 positions to fill or oversee -- 9 Q. Okay. 10 A. -- in that</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			warehouse. When I got the
2			call, I
3			11 went there immediately
4			--
5			12 Q. Got it.
6			13 A. -- and they were
7			still arguing.
8			14 Q. Got it. So did you
9			witness any parts of the
10			15 altercation?
11			16 A. I didn't witness
12			any part of the
13			altercation,
14			17 per se. I just showed
15			up and they were still
16			arguing,
17			18 almost face-to-face,
18			looked like they were
19			about to
20			19 fight, so I got off of
21			my cart and went to them
22			and
23			20 said, You got guys to
24			back away from each
25			other, you
26			21 know, and what
27			happened and I logged --
28			I asked Owen

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>22 what happened, I asked</p> <p>Judy what happened and</p> <p>then there</p> <p>23 were people around and I asked them what happened.</p> <p>11 You -- you sent an e-mail about the</p> <p>altercation and that</p> <p>12 was based on what you were told by other people?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So it wasn't based on anything you</p> <p>15 witnessed, right?</p> <p>16 A. It wasn't based on anything that I heard.</p> <p>4 Q. Okay. Just -- do you remember anybody that</p> <p>5 you spoke with about this Timbreza incident, when the</p> <p>6 argument was going on?</p> <p>You said the people</p> <p>around there</p> <p>7 were telling you that this racist comment was made.</p> <p>8 Do you remember</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			anybody?
2			9 A. I -- I don't
3			remember their names.
4			It's so
5			10 many people walking
6			around. And people, when
7			they see a
8			11 fight, they stop.
9			12 Q. Okay.
10			13 A. People want to see.
11			They oversee, they view,
12			14 so.
13			15 Q. Okay.
14			16 A. I don't remember names and I
15			don't have names.
16			21 Did Mr. Diaz tell you
17			that the racist comments
18			22 that Judy Timbreza
19			allegedly made to him
20			were made in
21			23 Spanish?
22			24 A. No.

Victor Quintero

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1	49:23- 50:8	Q: Why were you instructing Ed Romero to get involved in this issue between Ramon Martinez and Owen Diaz? Ms. Antonucci: Objection; lacks foundation, calls for speculation. A: Well, I guess because of the fact that if there was a problem that needed to be solved, he needed to work with him—both of them being shift supervisors or leads, you know, he needed to make sure they were on the same page, as far as what our expectations are.	<u>Counterdesignation:</u> 51:12-52:6. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a). 12 Q. You don't recall, other than the references 13 here to your asking Ed Romero to coordinate with Ramon 14 Martinez and Owen Diaz to work out that workplace 15 issue; correct? 16 A. Yeah, I mean, I don't have the -- I don't 17 remember the specifics at the time. But more than 18 likely, Ed may have talked to me about it, because I 19 know he did talk to me about Owen's pattern of 20 collaboration issues with people, you know, negative

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>21 behavior.</p> <p>22 Q. Ed Romero talked to you about that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay.</p> <p>25 A. And so it would have been Ed's job to talk to 1 the -- their supervisors about issues and problems</p> <p>2 and, you know, setting expectations as far as, you</p> <p>3 know, getting the job done and things like that. And</p> <p>4 then if there was still issues, then he would escalate</p> <p>5 it up to the chain of command, to either Wayne Jackson</p> <p>6 or myself, or both.</p>
2	65:20- 66:3	<p>Q: Is Ramon Martinez still working at the Tesla plant?</p> <p>A: Yes.</p> <p>Q: Where does he work now?</p> <p>A: Same thing, recycling.</p> <p>Q: But now he's got—he's a supervisor now; right?</p> <p>A: Either he was at the time, but for sure he is now.</p>	<p><u>Counterdesignation:</u> 66:4-66:9. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
4			Q. Is Ramon Martinez a
5			regular Tesla employee
6			now?
7			A. No, he's a
8			nextSource employee.
9			Supervisor.
10			Q. Okay.
11			A. And since then, he
12			has never demonstrated
13			any
14			other offensive behavior to anybody.

Wayne Jackson

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			General objection to all designations. Testimony is improperly designated because deponent was not a party when deposed, but a former employee of a party, and there is no showing that the deponent is unavailable or falls within any exception to Federal Rule of Civil Procedure 32(a)(4).
1	26:21-24	Q: It was an offensive depiction of an African American. Is that correct? A: Yes, sir.	Irrelevant and unduly prejudicial whether or not deponent found depiction offensive; only relevant testimony from deponent is investigation of incident and decision from investigation. Fed. R. Evid. 401-403.
2	75:4-13	Q: And just so we are clear, I think you said before that you thought that Mr. Martinez should be fired over this [Exh 128: racist drawing]; right? A: Yes, sir, I did. Q: And you also found that image of the jigaboo offensive to you; right? A: Yes, sir. Q: And when I say "offensive to you," offensive to you as an African-American; right? A: Yes, sir.	75:4-75:7. Irrelevant and unduly prejudicial whether or not deponent found depiction offensive; only relevant testimony from deponent is investigation of incident and decision from investigation. Fed. R. Evid. 401-403. <u>Counterdesignation:</u> 89:25-90:1, 90:3-90:5. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a). 25 MR. ORGAN: Q. Victor did not agree to 1 terminate Mr. Martinez; right? 3 THE WITNESS: Yeah, I

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			wouldn't say that he did 4 not agree to terminate, but it was more that it wasn't 5 his employee to terminate.
3	90:7-12	Q: But Victor could have said he can't work here anymore, right, being— A: He could have— Q: --from Tesla? A: Yes. He could have made that recommendation, yes.	
4	101:4-10	Q: Did it concern you that after the altercation between Mr. Diaz and Mr. Martinez in the October time period and then come January you've got this jigaboo drawing, did that concern you? Mr. Araneda: Objection. A: Yes, sir. Mr. Araneda: Vague.	<u>Counterdesignation:</u> 101:11-101:8, 101:21-102:21. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a). 11 MR. ORGAN: Q. And what did you do to act on 12 that concern that you had? 13 A. Like I said, I alerted the various agencies so 14 they could look into it a little further. 15 Q. And, in fact, that's why you decided, in your 16 opinion, that Mr. Martinez had been -- had crossed the 17 line at least twice such that he needed to be

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			18 terminated; right?
2			19 MR. ARANEDA:
3			Objection. It misstates
4			his
5			20 testimony.
6			21 THE WITNESS: I
7			wouldn't say he crossed
8			the
9			22 line twice. Once
10			again, the first incident
11			was more or
12			23 less unsubstantiated.
13			There were no witnesses
14			or
15			24 anybody. It was kind
16			of my-word-against-yours
17			type of
18			25 deal.
19			1 MR. ORGAN: Right.
20			2 THE WITNESS: So I
21			couldn't say that. No, I
22			3 couldn't say that.
23			4 I did say I feel that
24			the drawing was offensive
25			5 and was inappropriate
26			for the workplace.
27			6 MR. ORGAN: Q. Right.
28			7 Now, did you ask Mr.

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			Diaz if Mr. Martinez had
2			8 said anything else that
3			was inappropriate during
4			that
5			9 time period, in January
6			of 2016?
7			10 A. Yes, I believe so,
8			I did ask him that.
9			11 Q. And that would be
10			documented in your notes;
11			12 right?
12			13 A. Yes. Most likely,
13			yes.
14			14 Q. Do you know what
15			Mr. Diaz said in
16			particular?
17			15 A. I don't really
18			recall, other than, like
19			I said,
20			16 he just said he didn't
21			really like him. That was
22			kind
23			17 of what his main
24			statement was.
25			18 Q. Did Mr. Diaz say
26			that Mr. Martinez had
27			done
28			19 anything else

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>inappropriate?</p> <p>20 A. Other than the</p> <p>elevator incident when</p> <p>they got</p> <p>21 into the verbal</p> <p>altercation, no.</p>
5	122:5-8	<p>Q: Well, the final in terms of whether or not Mr. Martinez stayed working at the Tesla factory, that was something that Mr. Quintero could determine; right?</p> <p>A: As far as I know, yes, sir.</p>	<p><u>Counterdesignation:</u> 120:17-120:20, 120:25-121:8, 121:24-122:4. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>17 And then after you had a discussion with</p> <p>18 Mr. Quintero where you had recommended</p> <p>termination of</p> <p>19 Mr. Martinez, the two of you compromised on a suspension</p> <p>20 and written warning; correct?</p> <p>21 MR. ARANEDA:</p> <p>Objection. It misstates his</p> <p>22 testimony.</p> <p>23 THE WITNESS: I wouldn't say --</p> <p>24 MR. ARANEDA: It lacks foundation.</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>25 THE WITNESS: I wouldn't say "compromise"</p> <p>1 because, like I said, it wasn't my employee, so I had to</p> <p>2 refer it to Chartwell. They had to make the final</p> <p>3 determination of anything with regards to their</p> <p>4 employment. It wasn't up to me.</p> <p>24 With respect to the discipline the appropriate</p> <p>25 discipline for the jigaboo drawing, you at least recall</p> <p>1 that Mr. Quintero was involved in making the</p> <p>2 recommendation for what that would be; right?</p> <p>3 A. Yes and no. He can make a recommendation, but</p> <p>4 the final say was not his. It was up to Chartwell.</p>
6	141:9-25	<p>Q: I'm going to ask you about a word that has been—that's come up a few times in this case, and I don't want you to be offended, but I have to use the word. The word is nigger.</p> <p>A: Yes, sir.</p> <p>Q: Did you ever hear anyone use that word at Tesla?</p> <p>A: Yes, sir</p> <p>Q: In what circumstances did you hear that word being said?</p>	<p>Testimony should be excluded because not pertinent to the allegations raised by Plaintiff, did not involve Plaintiff, did not involve Plaintiff's supervisors, did not involve Plaintiff's alleged harassers, as set forth in Defendant's Motion <i>In Limine</i></p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			No. 3, section 4.
2		A: There had been times where I'd actually	<u>Counterdesignation:</u> 142:1-
3		walked—been walking through the	142:5, 143:5-143:7, 146:6-
4		facility, and there was—one time in particular, there	146:11, 147:5-147:8, 147:10-
5		was two Asian or Filipino	147:12. Rule of completeness.
6		gentlemen. And one was like, "What's up, my n---a,"	Fed. R. Evid. 106; Fed. R. Civ.
7		to the other one. That type of	P. 32(a).
8		thing. It still was offensive, but you know, it wasn't	1 Q. Well, apparently, it
9		my employee, so I didn't	wasn't offensive between
10		engage in it.	2 those people --
11			3 A. Yes.
12			4 Q. -- who were using
13			it, was it?
14			5 A. No, it wasn't.
15			5 MR. HORTON: Q. Did you
16			ever hear the word
17			6 nigger used at Tesla in
18			an intentionally
19			offensive way?
20			7 A. No, sir, I never did.
21			6 And did you ever
22			communicate to anybody
23			at,
24			7 like, Tesla human
25			resources or anything
26			like that about
27			8 the fact that you're
28			hearing --
			9 A. No, sir.

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			10 Q. -- A version of the
2			N word?
3			
4			11 A. No, sir, I did not.
5			5 Q. But you said that
6			you had heard the A
7			version
8			6 of the N word
9			throughout the factory
10			when you were
11			7 walking around.
12			8 Is that true?
13			10 THE WITNESS: I've
14			heard it on a few
15			occasions.
16			11 I just can't say just
17			everywhere, but I have
18			heard it a
19			12 few times, yes.

Michael Wheeler

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			General objection to all designations. Testimony is improperly designated because deponent was not a party when deposed, but a former employee of a party, and there is no showing that the deponent is unavailable or falls within any exception to Federal Rule of Civil Procedure 32(a)(4).
1	21:4-7	Q: What's your best recollection of what Jesus said when he called you the N-word after you told him not to take the pictures? A: Would have been "F-U" and then the n-word.	<p>Testimony should be excluded because not pertinent to the allegations raised by Plaintiff, did not involve Plaintiff, did not involve Plaintiff's supervisors, did not involve Plaintiff's alleged harassers, as set forth in Defendant's Motion <i>In Limine</i> No. 3, section 3.</p> <p><u>Counterdesignation:</u> 19:14-17, 19:24-20:1, 20:2-20:17. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>14 Q. Who was the person who called you the</p> <p>15 N-word?</p> <p>16 A. This was Jesus. I cannot remember his last</p> <p>17 name.</p> <p>24 Q. Okay. So was Jesus a Chartwell employee or</p> <p>25 was he an employee of Tesla?</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			1 A. He was either Chartwell or
2			Flagship.
3			2 Q. Okay. Tell me about
4			this incident where
5			3 Jesus called you the N-
6			word.
7			4 A. I was -- it was
8			pretty cut-and-dry. I
9			went
10			5 to speak with him about
11			what had happened, to let
12			6 him know that it was
13			inappropriate to take
14			pictures
15			7 of other associates,
16			but it was also
17			inappropriate
18			8 to take pictures of
19			associates while they're
20			9 off-duty.
21			10 He tried to justify
22			his actions by saying,
23			11 "Well, he was
24			sleeping. He's not
25			allowed to sleep."
26			12 I reminded him that he
27			was not in any
28			13 position of authority

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>and he needed to delete the picture.</p> <p>And then he turns around, says, you know --</p> <p>I'm sorry. Anyway, calls me the N-word and walks off.</p>
2	25:2-9	<p>Q: Okay. So you informed Ramon Martinez that you had been called the n-word.</p> <p>And as far as you know, nothing negative happened to Jesus after that, correct?</p> <p>A: As far as I know.</p> <p>Q: In fact, what you know is that Jesus received a promotion after that; is that correct?</p> <p>A: Very closely after that, yes.</p>	<p>Testimony should be excluded because not pertinent to the allegations raised by Plaintiff, did not involve Plaintiff, did not involve Plaintiff's supervisors, did not involve Plaintiff's alleged harassers, as set forth in Defendant's Motion <i>In Limine</i> No. 3, section 3. Testimony should also be excluded as inadmissible hearsay that does not fall within any exception since deponent only relying on what he was told by an unidentified person. Fed. R. Evid. 801-803.</p> <p><u>Counterdesignation:</u> 25:22-26:3. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>Q. Do you know whether Jesus' title was supervisor, or was it lead, or was it -- do you know?</p> <p>A. I was told supervisor. Definitely not</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>1 lead.</p> <p>2 Q. Okay.</p> <p>3 A. Now, did I see it on paper? I</p> <p>4 did not.</p>
3	35:4-10	<p>Q: I see. Okay.</p> <p>But it sounded like you did hear the n-word used at other times in the factory—</p> <p>A: Yeah.</p> <p>Q: --is that correct?</p> <p>A: During breaks or outside when they're smoking or in passing, coming into the factory.</p>	<p>Testimony should be excluded because not pertinent to the allegations raised by Plaintiff, did not involve Plaintiff, did not involve Plaintiff's supervisors, did not involve Plaintiff's alleged harassers, as set forth in Defendant's Motion <i>In Limine</i> No. 3, section 3.</p> <p><u>Counterdesignation:</u> 34:6-34:9, 35:11-13. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>6 Q. Did you ever hear the N-word used anywhere</p> <p>7 else on the factory?</p> <p>8 A. Not -- not outside of friendly context. So</p> <p>9 g-a instead of e-r, but never really aggressively.</p> <p>11 Q. And do you remember who the people were who</p> <p>12 you heard using the N-word?</p> <p>13 A. Everybody. Blacks, whites, Mexican.</p>
4	36:8-22	<p>Q: And in terms of what Josue said to you about what he would about the fact that you had been called the N-word, tell me, again, what did he say he would do?</p> <p>A: That would have been in an email.</p> <p>Q: An email?</p> <p>A: Yeah.</p> <p>Q: So you complained to Josue in an email?</p>	<p>Testimony should be excluded because not pertinent to the allegations raised by Plaintiff, did not involve Plaintiff, did not involve Plaintiff's supervisors, did not involve Plaintiff's alleged harassers, as set forth in</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
		<p>A: Yes. If you could—I don’t know if we—if we could get to the phone, if we could get to a supervisor phone—if you could get into my [Tesla] email, so much more could be taken care of.</p> <p>Q: I see.</p> <p>A: But right after I was terminated, they had me turn in my phone.</p>	<p>Defendant’s Motion <i>In Limine</i> No. 3, section 3. Inclusion of bracketed text that is not part of the original designation should not be permitted as improper and irrelevant. Fed. R. Evid. 401, 402.</p>
5	74:12-16	<p>Q: Now, in addition to you, Owen also had other supervisors; is that correct?</p> <p>A: It would have been Ramon.</p> <p>Q: Ramon Martinez?</p> <p>A: And Israel, the swing shift.</p>	<p>Deponent was not employed by Tesla but by Chartwell and was never hired Tesla (15:2-15:5, 15:21-15:22) and does not possess knowledge about who would supervise Plaintiff and Plaintiff never identified Michael Wheeler as a supervisor. Deponent also testified that Plaintiff was an elevator operator and deponent was a supervisor in Recycling, as was Ramon Martinez and deponent then testified (40:23-41:3) “I wouldn’t say the operators were recycling” and thus neither Ramon Martinez nor Israel were Plaintiff’s supervisors. Fed. R. Evid. 602.</p>

Erin Marconi

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			General objection to all designations. Testimony is improperly designated because deponent was not a party when deposed, but a former employee of a party, and there is no showing that the deponent is unavailable or falls within any exception to Federal Rule of Civil Procedure 32(a)(4).
1	35:2-7	Q: So with that understanding of the definition of the n-word [n-i-g-g-e-r or n-i-g-ga], is it your understanding that Tesla's anti-harassment and anti-discrimination zero-tolerance policies prohibit use of the n-word at the Tesla facility? A: Yes.	
2	36:5-13	Q: Okay. And if you had knows about someone using the n-word at the Tesla factory, that would certainly be something that you would investigate; correct? A: Absolutely. Q: And the reason that you would investigate that is use of the n-word at the Tesla factory could create a hostile work environment for other workers; right? A: Correct.	<u>Counterdesignation:</u> 49:7-49:14. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a). 7 Q In fact, every -- every employer has a duty to 8 make sure that its workers are working in an environment 9 that is harassment-free; right? 10 A Correct. 11 Q And that would include harassment based on sex

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>12 or race or any of</p> <p>those other prohibited</p> <p>categories;</p> <p>13 right?</p> <p>14 A Yes.</p>
3	52:3-6	<p>Q: And under Tesla policies, supervisors are supposed to report issues relating to harassment to their managers and to HR?</p> <p>A: Yes.</p>	
4	54:22-55:4	<p>Q: Sure. Let's say that a contract employee is working somewhere in the Tesla factory and they complain to a Tesla supervisor about harassment towards them by someone else working at the plant. What role—first of all, would the supervisor—the Tesla supervisor is supposed to report that to Tesla HR; correct?</p> <p>A: Correct.</p>	
5	59:22-60:2	<p>Q: In terms of Tesla's duty ... it has a duty to both its regular employees and the contractors to make sure that all of those people work in a work environment free from harassment or discrimination based on race; right?</p> <p>A: Correct</p>	<p><u>Counterdesignation:</u> 59:1-59:21. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>1 A -- if West Valley investigated it and came</p> <p>2 back and said there</p> <p>wasn't actually an issue,</p> <p>I'm going</p> <p>3 to believe that West Valley did their</p> <p>investigation</p> <p>4 thoroughly and if there</p> <p>was something to address,</p> <p>5 addressed it.</p> <p>6 Does that make sense?</p> <p>7 Q Sure.</p> <p>8 You -- you typically</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28			<p>rely on the contract --</p> <p>9 contracting agency to</p> <p>do an investigation into</p> <p>10 complaints by their</p> <p>employees; is that right?</p> <p>11 A If it is involving</p> <p>other of their employees.</p> <p>12 If it is involving</p> <p>Tesla employees, then I</p> <p>13 would talk to probably</p> <p>Tesla employees, they</p> <p>would talk</p> <p>14 to their employees.</p> <p>15 If the stars align and</p> <p>everyone was in the</p> <p>16 building or in the</p> <p>same side of the country</p> <p>and we would</p> <p>17 help -- sometimes I</p> <p>had been there when they</p> <p>were</p> <p>18 interviewing their</p> <p>employee and vice versa.</p> <p>But I</p> <p>19 wouldn't -- my</p> <p>preference would not be</p> <p>to interview</p> <p>20 someone else's</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			employee, and especially not without them 21 present.
6	100:11-20	Q: So if you had understood that Mr. Martinez had admitted to putting this drawing up, and also to have threatened Mr. Diaz previously, you would expect that Mr. Martinez would be fired pursuant to Tesla policy, wouldn't you? A: Assuming that all of that is true— Q: Yeah. A: ...I wouldn't presume what next Source does, but I would ask them not to have him return to an assignment at Tesla.	Testimony not based on personal knowledge because deponent testified she did not recall seeing the email or the drawing by Ramon Martinez (85:21-86:7) and during this time deponent was caring for her mother who was undergoing cancer treatment stating "not only is [the] Tesla part a blur, but the time frame is a blur" (91:18-92:3). Fed. R. Evid. 602. Testimony is speculative and impermissible lay opinion testimony not "rationally based on the witness's perception" and deponent not disclosed as an expert. Fed. R. Evid. 701.
7	116:22-25	Q: And the correct response to threatening conduct is to remove that individual from the factory; right? A: Correct.	Testimony not based on personal knowledge because email exhibit deponent is shown was not sent to her at the time but after investigation and decision were completed, and thus deponent's testimony about action taken after investigation is impermissible lay opinion testimony not "rationally based on the witness's perception" and deponent not disclosed as an expert. Fed. R. Evid. 602, 701.

Annalisa Heisen

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1	72:5-12	Q: Now, as to this policy, the antiharassment and discrimination policy, this policy would apply to all workers at the Tesla factory; correct? Ms. Jeng: Objection; vague and ambiguous and calls for speculation. A: There's an expectation that employees at Tesla as well as contractors and other people on-site are in compliance with the policy.	<u>Counterdesignation:</u> 74:24-75:9, 75:11-75:23, 169:7-169:18. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a). 24 Q. And as to contract employees, are contract 25 employees also trained on Tesla's antiharassment and 1 discrimination policy? 2 A. My understanding is that the agencies who 3 employ the contractors are doing training on 4 policies 5 and compliance. I don't have visibility into 6 their 7 processes. 8 Q. So your understanding is that the contracting 9 agencies are supposed to train their employees who 8 were working at the Tesla factory, on Tesla's 9 antiharassment and

1	#	Lines	Deposition Excerpt	Objection / Counterdesignation
2				discrimination policy;
3				correct?
4				
5				11 THE WITNESS: So,
6				there's an expectation
7				that
8				12 they're being trained
9				by their staffing
10				agencies on
11				13 antiharassment and
12				discrimination, but this
13				-- not
14				14 this policy
15				specifically; I'm not
16				sure what they're
17				15 doing. I couldn't
18				confirm if they're
19				training this
20				16 policy, since they're employees.
21				17 MR ORGAN: Q. What
22				steps does Tesla take to
23				18 ensure that
24				contractors who come into
25				and work in the
26				19 Tesla factory in
27				Fremont have training
28				relative to the
				20 topic of

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			antiharassment and
2			discrimination?
3			21 A. We have an
4			expectation that agencies
5			are
6			22 training on
7			antiharassment and
8			discrimination.
9			23 Q. And what is that
10			expectation based on?
11			24 A. That they're legally
12			compliant.
13			7 Q. When you previously
14			testified that you did
15			8 not know whether the
16			employee policies against
17			9 discrimination and
18			harassment, quote,
19			"applied
20			10 equally," unquote, to
21			contract workers and
22			employees,
23			11 what did you mean by
24			that?
25			12 A. The standards that
26			are outlined for
27			13 expectations of
28			employee behavior and

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>conduct do apply</p> <p>14 equally. But there's</p> <p>also verbiage in this</p> <p>policy</p> <p>15 regarding disciplinary</p> <p>action, up to and</p> <p>including</p> <p>16 termination, and that</p> <p>would be different for</p> <p>17 contractors. If it's</p> <p>an agency, we don't have</p> <p>that</p> <p>18 relationship with other staff. The</p> <p>agency does.</p>
2	79:7-15	<p>Q: So if a Tesla employee gets information about harassing conduct based on race in the factory, that's occurring in the factory, regardless of how they get that information, they then have a reporting duty, in terms of either providing that information to higher-level manager or sending it to HR; is that true?</p> <p>A: There's an expectation of that, as it's articulated in the policy.</p>	<p><u>Counterdesignation:</u> 35:11-35:17, 35:23-36:8. Rule of completeness. Fed. R. Evid. 106; Fed. R. Civ. P. 32(a).</p> <p>11 "QUESTION: Well, I'm</p> <p>actually going on your</p> <p>12 understanding of the</p> <p>policy. So based on your</p> <p>13 understanding of</p> <p>Tesla's policies and</p> <p>procedures, do</p> <p>14 employees who receive</p> <p>information or observe,</p> <p>15 themselves, harassing</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28			<p>conduct based on race in the</p> <p>16 workplace, have an obligation to report that conduct</p> <p>17 to a higher level?")</p> <p>23 THE WITNESS: I'm not sure if that is</p> <p>24 particularly articulated in the policy. I think it</p> <p>25 depends on the circumstances as to who would be</p> <p>1 involved in that concern for the employees. It would</p> <p>2 vary depending on who the employee was.</p> <p>3 MR ORGAN: Q. Let's say that a lead,</p> <p>4 production lead at the Tesla factory, either observed</p> <p>5 or received information about harassing conduct based</p> <p>6 on race. Would that lead have an obligation to report</p> <p>7 that information to</p>

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			someone above their level? 8 A. There is an expectation that they would.
3	112:8-18	Q: What does Tesla do to make sure that its contractor organizations do a thorough and effective investigation? A: In general, when these complaints come to Tesla's attention—these complaints being harassment and discrimination complaints—if they involve contractors, we expect that the Tesla HR person is in communication with the agency. So even if they're not the ones conducting the investigation, they're making sure that the issue is resolved by collaborating the agency.	82:21-82:25, 83:3-83:21, 83:24-83:25. 21 Q. So in terms of ensuring that workers at the 22 Tesla factory are not subject to harassment based on 23 race, how does Tesla's HR department ensure that 24 that 25 is the case, if they are delegating 26 investigation 27 processes to non-Tesla employees? 3 THE WITNESS: There's still an expectation 4 that these types of concerns that are brought forward 5 will be investigated, but it depends case by case as 6 to how that's

#	Lines	Deposition Excerpt	Objection / Counterdesignation
1			approached.
2			7 MR ORGAN: Q. There must
3			be at least some
4			8 oversight, though, by
5			Tesla human resources,
6			relative
7			9 to investigations
8			conducted by contractors;
9			right?
10			10 A. And again, depends
11			on the case.
12			11 Q. In terms of Tesla's
13			efforts to ensure that it
14			12 has a workplace free
15			from harassment based on
16			race,
17			13 are there any kind of
18			procedures that Tesla has
19			14 adopted for
20			coordinating
21			investigations into
22			15 allegations of
23			harassment based on race?
24			16 A. It depends on the
25			case. It varies widely.
26			17 There's not one fixed
27			method that we address
28			that

#	Lines	Deposition Excerpt	Objection / Counterdesignation
18			with.
19			Q. There are no
20			written procedures that
21			Tesla
22			has for coordinating
23			investigations of
24			allegations of
25			harassment based on
			race?
			THE WITNESS: Not that
			outline step by step
			for each of these cases.

Titus McCaleb

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			General objection to all designations. Testimony is improperly designated because deponent was a third party when deposed, and there is no showing that the deponent is unavailable or falls within any exception to Federal Rule of Civil Procedure 32(a)(4).
1	63:25-64:12	Q: Okay? So what racially charged words did you hear while working at Tesla? A: The N-word with g-g-e-r, which I guess I have to say for the record it's "nigger" and I've heard the N-word with the g-g-a, which is "nigga," and other terms used for other ethnicities that –yeah, I guess I have to say them now because we're all here.	Testimony should be excluded because not pertinent to the allegations raised by Plaintiff, did not involve Plaintiff, did not involve Plaintiff's supervisors, did not involve Plaintiff's alleged harassers and conduct allegedly occurred after Plaintiff no longer worked at Tesla, as set forth in Defendant's Motion <i>In Limine</i> No. 1, section 3. Inclusion of bracketed text that is not part of the original designation should not be permitted as improper and irrelevant. Fed. R. Evid. 401, 402. <u>Counterdesignation:</u> 91:19-91:22, 93:11-17 19 Q. Let me go back and re-ask the question. 20 You testified that Khoi Nguyen called you

#	Lines	Deposition Excerpt	Objection / Counterdesignation
			<p>21 n-i-g-g-e-r once; correct?</p> <p>22 A. Correct.</p> <p>11 Q. So Khoi Nguyen said, "Oh, so Giddeon was 12 calling you n-i-g-g- e-r"? Is that how Khoi Nguyen 13 referred to you as an n-i-g-g-e-r?</p> <p>14 A. He said to me, "Oh, he called you" - - once</p> <p>15 again, I apologize. "Oh, he called you a nigger?"</p> <p>16 And I told him, as I just said, "Unacceptable 17 on both accounts."</p>
2	70:3-6	<p>Q: Who said the words that you listed?</p> <p>A: A few of my production associates on lines that I participated on, as well as seeing them scribbled into stalls and on top of fliers</p>	<p>Testimony should be excluded because not pertinent to the allegations raised by Plaintiff, did not involve Plaintiff, did not involve Plaintiff's supervisors, did not involve Plaintiff's alleged harassers and conduct allegedly occurred after Plaintiff no longer worked at Tesla, as set forth in Defendant's Motion <i>In Limine</i> No. 1, section 3.</p>

1	#	Lines	Deposition Excerpt	Objection / Counterdesignation
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CALIFORNIA CIVIL RIGHTS LAW GROUP
ALEXANDER KRAKOW + GLICK LLP

DATED: April 27, 2020

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